

**CITY OF NEWPORT BEACH
PLANNING COMMISSION MEETING**

March 3, 2011 Hearing
Agenda Item 4

SUBJECT: Crow Burger Kitchen Appeal - (PA2010-155)
3107 Newport Boulevard
▪ Minor Use Permit No. UP2010-036

APPLICANT: Steve Geary

PLANNER: Makana Nova, Assistant Planner
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PROJECT SUMMARY

An appeal of the Zoning Administrator's approval of Minor Use Permit No. UP2010-036 allowing an eating and drinking establishment (food service with no late hours) with a covered patio and a Type 41 (On Sale Beer and Wine, Eating Place) Alcoholic Beverage Control (ABC) license.

RECOMMENDATION

- 1) Conduct a de novo hearing; and
- 2) Adopt Resolution No. ____ denying the appeal and upholding and affirming the decision of the Zoning Administrator to approve Minor Use Permit No. UP2010-036, subject to the findings and conditions of approval set forth in the draft resolution (Attachment No. PC 1).

DISCUSSION

Zoning Administrator Action

The Zoning Administrator held a public hearing on January 13, 2010. The application was continued to January 27, 2011 to allow the applicant time to provide an acoustical summary that addressed the potential noise impacts of customers on the outdoor patio to nearby residents. The Zoning Administrator approved the Minor Use Permit application on January 27, 2011, and the hours of operation for the outdoor patio were limited from 9:00 a.m. to 10:00 p.m. The staff report and action letter from the Zoning Administrator hearing have been attached for reference (Attachment Nos. PC 2 and 3).

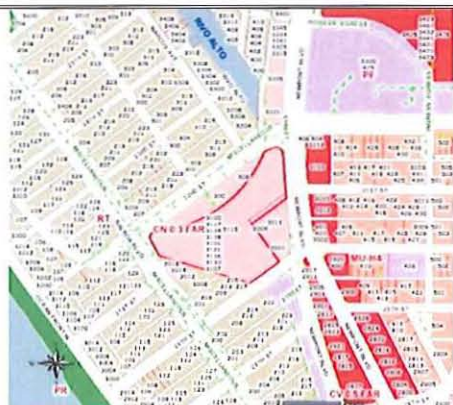
On February 7, 2011, Planning Commissioner Charles Unsworth appealed the approval of the Minor Use Permit. Commissioner Unsworth's appeal cited the process by which the project was approved, the service of alcoholic beverages on the outdoor patio, and

DATE TIME NAME

VICINITY MAP



GENERAL PLAN



ZONING



LOCATION	GENERAL PLAN	ZONING	CURRENT USE
ON-SITE	CN (Neighborhood Commercial)	CN (Commercial Neighborhood)	Vacant
NORTH	RT (Two-Unit Residential)	R-2 (Two-Unit Residential)	Single-unit and two-unit dwellings
SOUTH	PF (Public Facilities) and RT (Two-Unit Residential)	PF (Public Facilities) and R-2 (Two-Unit Residential)	Retail, public parking lot, and single-unit and two-unit dwellings
EAST	CV (Visitor Serving Commercial)	CV (Visitor Serving Commercial)	Retail
WEST	RT (Two-Unit Residential)	R-2 (Two-Unit Residential)	Single-unit and two-unit dwellings

the applicability of the newly enacted Operator License Ordinance for the subject establishment.

On February 9, 2011, Planning Commissioner Robert Hawkins filed a second appeal of the approval of the Minor Use Permit. Commissioner Hawkins' appeal statement cited the process by which the project was approved, the service of alcoholic beverages on the outdoor patio, the applicability of certain Section 20.48.030 (Alcohol Sales) of the Zoning Code, square footage and parking for the subject establishment in relation to the overall shopping center, and a typographical error in the Zoning Administrator action letter.

Planning Commission Review Hearing

Pursuant to Section 20.64.030.C of the Zoning Code, a public hearing on an appeal is conducted "de novo", meaning that it is a new hearing and the prior decision of the Zoning Administrator to approve Use Permit No. UP2010-036 has no force or effect. The Planning Commission is not bound by the Zoning Administrator's prior decision or limited to the issues raised by the appeal.

Analysis

A memorandum from Planning Commissioner Charles Unsworth requesting an appeal of the subject application is attached (Attachment No. PC 4). The analysis below summarizes Commissioner Unsworth's requests to review the Minor Use Permit approved by the Zoning Administrator and provides staff's responses for the Planning Commission's consideration.

Use Permit Review Process

- 1. Condition No. 6 of Exhibit A, Conditions of Approval, of Planning Commission Resolution No. 1826 for the Landing Project, which was passed, approved, and adopted December 9, 2010, provides as follows: "All Eating and drinking establishments will be required to obtain separate use permits. Any separate discretionary approvals will regulate the operation of the specific use within the project site. Nothing in this resolution and or conditions ensures any square footage for any restaurant use or application." That condition was imposed under authority of the Zoning Code ("Old Zoning Code"), which was in effect prior to the adoption of the new Zoning Code. The Old Zoning Code and Condition No. 6 required a use permit to be granted by the Planning Commission as opposed to a minor use permit authorized by the new Zoning Code. The adoption of the new Zoning Code did not change the intent or legal effect of Condition No. 6. Therefore, a use permit for the captioned Project must be granted by the Planning Commission, not a minor use permit by the Zoning Administrator or Planning Director."*

While Planning Commission Resolution No. 1826 was approved under the prior, "Old", Zoning Code requirements, the conditions of approval do not specifically require the

approval of the Planning Commission. Subsequent use permit applications are not required to be processed under the prior Zoning Code requirements.

The subject Minor Use Permit was deemed complete on December 22, 2010 and processed pursuant to the application requirements of the current Zoning Code, which allow an eating and drinking establishment with alcohol service and no late hours (after 11:00 p.m.) to be processed with a minor use permit. Therefore, the subject application has complied with the conditions of approval as required by Planning Commission Resolution No. 1826.

Alcohol Service on the Outdoor Patio

2. *The Use Permit for the Chipotle restaurant (Use Permit No. 1827) located within the Landing was also approved on December 9, 2010. Service of alcohol was prohibited in its outdoor dining area. Prior to granting the captioned Use Permit, the Planning Commission should hear evidence as to why one applicant should be allowed and one applicant not allowed the right to serve alcohol in its outdoor dining area. The Zoning Administrator's decision did not substantiate such a distinction.*

The use permit and outdoor dining permit applications for Chipotle Mexican Grill, Use Permit No. UP2010-017 and Outdoor Dining Permit No. OD2010-004 (PA2010-096), were processed under the prior Zoning Code, which required Planning Commission review and approval. Alcohol service on the outdoor patio was not a part of the applicant's request for this particular application. As a result, the application was not reviewed to allow alcohol service on the outdoor patio and the project was conditioned accordingly.

The subject application for Crow Burger, Minor Use Permit No. 2010-036, did include a request for alcohol service on the outdoor patio. Thus, the application was reviewed by the Planning Department and the Police Department accordingly. Potential land use and noise conflicts were analyzed in addition to the potential for an increase in demand on police services. The conditions of approval in the draft resolution reflect the standards recommended by both departments to reduce the potential impacts of alcohol service on the outdoor patio to the greatest extent possible.

Operator License Ordinance

3. *Prior to granting any rights to serve alcohol in outdoor dining areas and/or establishing hours of operations for serving alcohol, the Planning Commission should be fully apprised of the impact and relationship between the proposed Use Permit or any other use permit or minor use permit and the newly enacted Operator License Ordinance.*

The Operator License Ordinance, Zoning Code Amendment No. CA2011-002 (PA2010-041), was adopted on January 25, 2011, and became effective on February 24, 2011.

The ordinance requires establishments that offer alcoholic beverages for on-site consumption in combination with late hours, entertainment, or dancing to obtain an operator license. The subject application is not subject to the newly enacted Operator License Ordinance because the applicant does not propose late hours of operation (after 11:00 p.m.), live entertainment, or dancing at the subject establishment.

A memorandum from Planning Commissioner Robert Hawkins also requesting an appeal of the subject application is attached (Attachment No. PC 5). The analysis below summarizes Commissioner Hawkins's requests to review the Minor Use Permit approved by the Zoning Administrator and provides staff's responses for the Planning Commission's consideration.

Planning Commission Review

1. *"The Commission understood that as Chairman McDaniel said, that when the developer brings other applications, we (the Planning Commission) will have an opportunity to hear it [the use permit applications for subsequent applications]. Finding B, which states, 'All eating and drinking establishments will be required to obtain separate use permits' cannot be made."*

At the Planning Commission hearing of December 9, 2010, the application for Crow Burger, which was still in process at the time, would have required a conditional use permit and review by the Planning Commission under the current Zoning Code because the applicant proposed late hours of operation (after 11:00 p.m.). The applicant later revised the proposed hours of operation and Planning Commission review was not required under the current Zoning Code.

The conditions of approval for Amendment No. 1 to Use Permit No. UP2010-002 (PA2010-166) (the Landing Shopping Center) require separate use permit approvals for eating and drinking establishments within the shopping center. However, the conditions do not specifically state that a conditional use permit reviewed by the Planning Commission is required for each individual eating and drinking establishment. Each new application will be reviewed by the decision-making authority specified by the current Zoning Code.

Applicability of Section 20.48.030 of the Zoning Code

2. *"The facts in support of Finding B [in the Zoning Administrator Action Letter] state: 'The service of beer and wine is intended for the convenience of customers dining at the restaurant.' This fact does not support the suggested finding because Section 20.48.030 forbids consumption of alcohol on-site. Section 20.48.030 addresses off sale alcohol uses such as liquor stores. Because the findings cannot be made for Section 20.48.030, uses and such uses conflict with the applicant's desired uses, this finding is inappropriate."*

Section 20.48.030 of the Zoning Code (Alcohol Sales) provides standards for alcohol sales in general. Part A of this section is intended for off-sale alcohol sales establishments and is not intended to prohibit on-sale consumption of alcohol at all eating and drinking establishments throughout the City. On-sale alcohol service is permitted within approved outdoor dining areas per Section 20.48.090.B.1.a (Sales Activities) of the Zoning Code.

Section 20.48.090.F.3.c (On-sale Alcohol Sales) of the Zoning Code requires the review authority to make the findings referenced by Commissioner Hawkin's in Section 20.48.030.C.3 (Required Findings). The specific finding required by Section 20.48.030.C.3 states, "*the review authority shall find that the use is consistent with the purpose and intent of this Section.*" The purpose and intent of the section, explained in the paragraphs just below the subheading for Section 20.48.030, identifies that the purpose of the section is to preserve a healthy and safe environment for residents and businesses by establishing a set of consistent standards for the safe operation of retail alcohol sales establishments. The intent of the section is to prevent alcohol-related problems. The factors for consideration were discussed in the Zoning Administrator Staff Report (Attachment PC 2) and the required finding in addition to the standard use permit findings was included in the Zoning Administrator Action Letter (Attachment No. PC 3) and has also been incorporated into the draft resolution (Attachment No. PC 1).

Since Part A (Operating Standards) of Section 20.48.030 (Alcohol Sales) of the Zoning Code does not apply to the subject establishment, the proposed application is in compliance with the purpose and intent Section 20.48.030 as required by the findings identified in Section 20.48.090.F.3.c and the proposed use is not in conflict with the required Zoning Code sections.

Alcohol Service on the Outdoor Patio

3. *The presence of alcoholic beverages in the outdoor dining area is inconsistent with the General Plan, the Zoning Code, is incompatible with adjacent residential uses, and is detrimental to the health, safety, and welfare of the area and its residents. The captioned Use Permit's grant of alcohol consumption in the outdoor patio is unsound land use policy itself and conflicts with the General Plan). Findings C through G cannot be made because of the use of alcohol in the outdoor patio."*

Section 20.48.090.F.3.c (On-sale alcohol sales) of the Zoning Code requires the review authority to consider the potential impact of sensitive land uses within 100 feet of the proposed establishment, the proximity of other establishments selling alcoholic beverages for either off-site or on-site consumption, and to provide facts to support the findings in Section 20.48.030.C.3 (Required Findings).

The proximity of residential uses to the proposed outdoor patio was considered by staff and the Zoning Administrator. The Police Department recommended limiting the hours

of the outdoor patio to 10:00 p.m. to minimize noise to adjacent residents and the number of service calls to the establishment. The Minor Use Permit application was continued by the Zoning Administrator to allow the applicant to submit an acoustical summary (Attachment No. PC 6) that demonstrated the projected impact of noise from the outdoor patio on exterior noise standards measured at the property line adjacent to 32nd Street. As a result of these considerations, the Zoning Administrator limited the hours of operation for the outdoor patio from 9:00 a.m. to 10:00 p.m. to ensure compliance with the Zoning Code and General Plan policies with regard to sensitive land uses and noise.

Alcohol service on the accessory outdoor patio is characteristic of several restaurants in the Cannery Village/McFadden Square neighborhood. The seating configuration both inside and outside lend the establishment to fine dining with tables and chairs. The establishment does not lend itself to a bar or tavern because there is no bar or counter to serve patrons. Instead, patrons are to be served at a table configuration, which places an emphasis on the dining experience, with alcohol consumption as an accessory service. The adjacent tenant space, Chipotle, also provides on sale alcohol service but does not offer alcohol service on the outdoor patio adjacent to Newport Boulevard.

An analysis of the factors for consideration and the additional required finding per Section 20.48.030.C.3 are discussed in the Zoning Administrator staff report (Attachment No. PC 3).

As required by Section 20.48.090 (Eating and Drinking Establishments) of the Zoning Code, the outdoor patio area provides adequate barriers between the outdoor dining area and adjacent parking, pedestrian, and vehicular circulation areas. The proposed awning over the outdoor patio area is compatible with the architecture of the overall shopping center and will enhance the overall dining experience of the establishment.

Parking for the Outdoor Patio

4. *"The captioned Use Permit which is processed under the recently adopted Zoning Code appears to include outdoor dining as part of the use permit. However, it is unclear whether this outdoor dining grant ensures that the size of the outdoor dining will not overburden the parking at the Landing."*

The subject use permit includes both the interior dining and outdoor patio approvals as permitted under the current Zoning Code. An analysis of the parking for the proposed establishment is provided in the Zoning Administrator staff report (Attachment No. PC 3). The tracking tables, which demonstrate the square footage calculations for the interior dining and outdoor patio of the new eating and drinking establishment, are included as Attachment No. PC 9. The addition of the interior gross floor area combined with the outdoor patio square footage in excess of 25 percent of the net public area for the new establishment does not exceed the 15 percent limitation for eating and drinking

establishments within the shopping center. The proposed project, combined with previously permitted eating and drinking establishments, accounts for 54 percent of the of the gross floor area allotted for eating and drinking establishments.

Exterior Signage

5. *Condition No. 1 states, "the development shall be in substantial conformance with the approved site plan, floor plan, and building elevations dated with this date of approval." Although this is unclear, presumably it means the plans provided to the Zoning Administrator. Condition No. 25, states: "There shall be no exterior advertising or signs of any kind or type including advertising directed to the exterior from within, promoting or indicating the availability of alcoholic beverages." However, the building elevations show the advertising of beer: "Crow Burger Kitchen, find food + beer. This conflicts with Condition No. 25."*

Condition No. 48 of the Zoning Administrator Action Letter states, "All proposed signs shall be in conformance with the approved Comprehensive Sign Program for the project site and provisions of Chapter 20.67 of the Newport Beach Municipal Code." Signage is not included in the subject Minor Use Permit approval. The colored exterior elevations provided in the Planning Department Action Report were for demonstrative purposes only and are not to be included as part of the final, approved set of plans. Exterior elevations for the Minor Use Permit approval were provided on a separate plan sheet, entitled A5.0. Note No. 3 on this plan sheet indicates that all tenant signage is under a separate permit.

The property owner has submitted an application for a comprehensive sign program at the shopping center and the Planning Department is currently reviewing the application for compliance with Zoning Code standards and use permit approvals for the shopping center. Thus, there will not be a conflict between the approved set of plans and Condition Nos. 1, 25, and 48.

Square Footage Calculation

6. *"Condition No. 4 requires that, 'The patio floor area in excess of the 25 percent allowance will be deducted from the 15 percent of gross floor area limitation for eating and drinking establishment uses.' The captioned decision fails to perform this deduction and fails to show the square footage which remains for other eating and drinking establishments. The captioned decision should be revised to include this calculation."*

The tracking tables, which demonstrate the square footage calculations for the new eating and drinking establishment, were provided as an attachment to the Zoning Administrator staff report, which was not scanned as a part of the weekly Planning Department Action Report. The tracking tables have been included in the Planning Commission staff report as Attachment No. PC 9.

At the Planning Commission meeting of December 9, 2010, the specific square footage language was left out of the condition of approval for Use Permit No. UP2010-017 (Chipotle), so as not to restrict the square footage to a specific tenant space within the shopping center. As a result, the subject application was conditioned accordingly. Should the Planning Commission wish to do so, the Planning Commission may revise Condition No. 4 to indicate the specific square footage allotted for the subject establishment as shown in the tracking tables.

Decision Date

7. *"The captioned decision lists the date of the decision as 'January 13, 2011. As indicated above, this is incorrect. As indicated on the attached Agenda for the January 27, 2011 Meeting of the Zoning Administrator, the hearing for the captioned action was noticed for January 13th but continued to January 27, 2011. Hence the appeals are timely and this typographical error should be corrected."*

The date as originally indicated on the action letter was a typographical error and has been corrected as shown in Attachment No. PC 3.

Summary

Staff recommends the Planning Commission uphold the Zoning Administrator's approval of the use permit per the conditions of approval provided in the attached draft resolution for a food service, eating and drinking establishment with a Type 41 (On Sale Beer and Wine, Eating Place) ABC license and an outdoor dining patio.

Alternatives

If the Planning Commission does not wish to sustain the decision of the Zoning Administrator, the Planning Commission may revise the conditions of approval or reverse the decision of the Zoning Administrator and deny the application. Should the Planning Commission choose to do so, staff will return with a resolution incorporating new findings and or/or conditions.

ENVIRONMENTAL REVIEW


The project is categorically exempt under Section 15303, of the California Environmental Quality Act (CEQA) Guidelines - Class 3 (New Construction or Conversion of Small Structures). The Class 3 exemption includes a store, motel, office, restaurant, or similar structure not involving significant amounts of hazardous substances, and not exceeding 2,500 square feet in floor area. This exemption also includes accessory (appurtenant) structures including garages, carports, patios, swimming pools, and fences.

The proposed project involves the establishment of a restaurant in an existing tenant space and the construction of a new outdoor patio. The proposed use is less than 2,500 square feet. Therefore, both the interior use and outdoor patio qualify for a categorical exemption under Class 3.

NOTICING

Notice of this hearing was published in the Daily Pilot, mailed to property owners within 300 feet of the property and posted at the site a minimum of 10 days in advance of this hearing consistent with the Municipal Code. Additionally, the item appeared upon the agenda for this meeting, which was posted at City Hall and on the City website.

Prepared by:


Makana Nova, Assistant Planner

Submitted by:


Patrick J. Alford, Planning Manager

ATTACHMENTS

- PC 1 Draft Resolution
- PC 2 Zoning Administrator Staff Report
- PC 3 Zoning Administrator Action Letter
- PC 4 Commissioner Unsworth's Memorandum Requesting Appeal
- PC 5 Commissioner Hawkin's Memorandum Requesting Appeal
- PC 6 Acoustical Summary
- PC 7 Alcohol Related Statistics
- PC 8 Newport Beach Reporting Districts
- PC 9 Police Department Recommendation
- PC 10 The Landing Square Footage Tracking Tables
- PC 11 Project plans

Attachment No. PC 1

Draft Resolution

RESOLUTION NO. ####

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH APPROVING MINOR USE PERMIT NO. UP2010-036 FOR A FOOD SERVICE, EATING AND DRINKING ESTABLISHMENT WITH NO LATE HOURS, A COVERED OUTDOOR PATIO, AND A TYPE 41 (ON SALE BEER AND WINE, EATING PLACE) ALCOHOLIC BEVERAGE CONTROL (ABC) LICENSE LOCATED AT 3107 NEWPORT BOULEVARD (PA2010-155).

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Steve Geary, with respect to property located at 3107 Newport Boulevard, and legally described as Lots E, F, and H on Parcel Map, as per map filed in book 32, page 41 of Parcel Maps, in the office of the County Recorder in the County of Orange, together with that portion of Lake Avenue shown as Parcel "G" on said Parcel Map, vacated and abandoned by Resolution No. 1012 of the City Council of Newport Beach, recorded May 15, 1981 as Instrument No. 40308 in book 14079, page 939 of official records in the office of said County Recorder, also together with a portion of Section 28, Township 6 south, range 10 west, San Bernardino Meridian, as per Parcel Nos. 1, 2, and 3 of the official plat filed in the district land office August 4, 1980 requesting approval of a minor use permit.
2. The applicant proposes a food service, eating and drinking establishment with no late hours, a covered outdoor patio, and a Type 41 (On Sale Beer and Wine, Eating Place) Alcoholic Beverage Control (ABC) license. The gross floor area of the establishment is 1,878 square feet, the interior net public area will be 650 square feet, and the outdoor patio will be 259 square feet in area. The establishment will provide a maximum of 42 interior seats and 22 seats on the patio. The hours of operation are from 9:00 a.m. to 11:00 p.m., daily and 9:00 a.m. to 10:00 p.m. for the outdoor patio. The property is located in the CN (Commercial Neighborhood) zoning district.
3. The subject property is located within the Commercial Neighborhood (CN) zoning district and the General Plan Land Use Element category is Neighborhood Commercial (CN).
4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is Neighborhood Commercial (CN).
5. A public hearing was held by the Zoning Administrator on January 13, 2011, in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this meeting.

6. A public hearing was held by the Zoning Administrator on January 27, 2011, in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this meeting.
7. A public hearing was held appealing the Zoning Administrator's approval by the Planning Commission on March 3, 2011, in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this meeting.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project has been determined to be categorically exempt under the requirements of the California Environmental Quality Act under Class 3, (New Construction or Conversion of Small Structures). The Class 3 exemption includes a store, motel, office, restaurant or similar structure not involving significant amounts of hazardous substances, and not exceeding 2,500 square feet in floor area. This exemption also includes accessory (appurtenant) structures including garages, carports, patios, swimming pools, and fences. The proposed project involves the establishment of a restaurant in an existing retail tenant space and the construction of a new outdoor patio. The proposed use is less than 2,500 square feet. Therefore, proposed use and outdoor patio qualifies for a categorical exemption under Class 3.

SECTION 3. REQUIRED FINDINGS.

In accordance with Section 20.48.030 (Alcohol Sales) of the Newport Beach Municipal Code, the following findings and facts in support of the findings for a use permit are set forth:

Finding

- A. *The use is consistent with the purpose and intent of Subsection 20.48.030 (Alcohol Sales) of the Zoning Code.*

Facts in Support of Finding

- A-1. The project has been reviewed and conditioned to ensure that the purpose and intent of Section 20.48.030 (Alcohol Sales) of the Zoning Code is maintained and that a healthy environment for residents and businesses is preserved. The service of beer and wine is intended for the convenience of customers dining at the restaurant. Operational conditions of approval recommended by the Police Department relative to the sale of alcoholic beverages will ensure compatibility with the surrounding uses and minimize alcohol related impacts.

In accordance with Section 20.52.020.F of the Newport Beach Municipal Code, the following findings and facts in support of the findings for a use permit are set forth:

Finding

B. The use is consistent with the General Plan and any applicable specific plan.

Facts in Support of Finding

- B-1. The General Plan land use designation for this site is CN (Neighborhood Commercial). The CN designation is intended to provide for a limited range of retail and service uses developed in one or more distinct centers oriented to serve the needs of and maintain compatibility with residential uses in the immediate area. An eating and drinking establishment with alcohol sales and accessory outdoor dining is a consistent use within this land use designation. Restaurant uses can be expected to be found in this area and similar locations and are complimentary to the surrounding commercial and residential uses.
- B-2. Eating and drinking establishments are common in the vicinity along the Balboa Peninsula and are frequented by visitors and residents alike. The establishment is compatible with the land uses permitted within the surrounding neighborhood. The new establishment will improve and revitalize the existing retail building and the surrounding neighborhood.
- B-4. The subject property is not part of a specific plan area.

Finding

C. The use is allowed within the applicable zoning district and complies with all other applicable provisions of this Zoning Code and the Municipal Code.

Facts in Support of Finding

- C-1. The site is located in the CN (Commercial Neighborhood) Zoning District. The CN zoning district is intended to provide for areas appropriate for a limited range of retail and service uses developed in one or more distinct centers oriented to serve primarily the needs of and maintain compatibility with residential uses in the immediate area. The proposed food service, eating and drinking establishment with beer and wine alcohol service and an outdoor patio is consistent with land uses permitted by the CN Zoning District.

Finding

D. The design, location, size, and operating characteristics of the use are compatible with the allowed uses in the vicinity.

Facts in Support of Finding

- D-1. The operation of the restaurant will be restricted to the hours between 9:00 a.m. and 11:00 p.m., daily. The operation of the outdoor patio will be restricted to the hours between 9:00 a.m. and 10:00 p.m., daily.
- D-2. A restaurant has been operated in this location since 1971 pursuant to Use Permit No. 1551 and has not proven detrimental to the area. The tenant space within the shopping center has operated as an eating and drinking establishment in the past and demonstrated the location's capability of operating as a compatible use with other land uses in the vicinity.
- D-3. The project includes conditions of approval to ensure that potential conflicts are minimized to the greatest extent possible. The restaurant is oriented toward the parking lot and is located approximately 225 feet from residential properties across 32nd Street. The use permit has been conditioned to require the folding doors and the outdoor patio area to be closed by 10:00 p.m. so that the establishment will comply with exterior noise standards and shield the restaurant activity from the residential uses across 32nd Street. The applicant is also required to control trash and litter around the subject property.
- D-4. The operational conditions of approval recommended by the Police Department relative to the sale of alcoholic beverages will ensure compatibility with the surrounding uses and minimize alcohol related impacts. The project has been conditioned to ensure the welfare of the surrounding community so that the business remains a restaurant and does not become a bar or tavern. The project has been conditioned so that no dancing or live entertainment will be permitted on the premises.
- D-5. The applicant is required to install a grease interceptor, obtain Health Department approval prior to opening for business, and comply with the California Building Code to ensure the safety and welfare of customers and employees within the establishment.

Finding

- E. *The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle (e.g., fire and medical) access and public services and utilities.*

Facts in Support of Finding

- E-1. The project site is located within an existing retail building and the tenant space is designed and developed for an eating and drinking establishment. The design, size, location, and operating characteristics of the use are compatible with the surrounding neighborhood.
- E-2. Adequate public and emergency vehicle access, public services, and utilities are provided within the renovated shopping center.

- E-3. The tenant improvements to the project site will comply with all Building, Public Works, and Fire Codes. All ordinances of the City and all conditions of approval will be complied with.

Finding

- F. *Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, a safety, or general welfare of persons residing or working in the neighborhood of the proposed use.*

Facts in Support of Finding

- F-1. The project has been reviewed and includes conditions of approval to ensure that potential conflicts with the surrounding land uses are minimized to the greatest extent possible. The operator is required to take reasonable steps to discourage and correct objectionable conditions that constitute a nuisance in parking areas, sidewalks and areas surrounding the subject property and adjacent properties during business hours, if directly related to the patrons of the establishment. The outdoor patio and louvered folding doors must be closed by 10:00 p.m. to limit the exterior noise to the surrounding residents.
- F-2. The food service, eating and drinking establishment will serve the surrounding residential community. The proposed establishment will provide dining services as a public convenience to the surrounding neighborhood. This will revitalize the project site and provide an economic opportunity for the property owner to update the retail tenants and services, which best serve the quality of life for the surrounding residential community.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Planning Commission of the City of Newport Beach hereby denies the appeal, upholding and affirming the decision of the Zoning Administrator, and approving Use Permit No. UP2010-036, subject to the conditions set forth in Exhibit A, which is attached hereto and incorporated by reference.
2. This action shall become final and effective fourteen days after the adoption of this Resolution unless within such time an appeal is filed with the City Clerk in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.

PASSED, APPROVED AND ADOPTED THIS 3rd DAY OF MARCH, 2011.

AYES:

NOES:

ABSTAIN:

ABSENT:

BY: _____
Earl McDaniel, Chairman

BY: _____
Michael Toerge, Secretary

EXHIBIT "A"**CONDITIONS OF APPROVAL**

(Project-specific conditions are in italics)

Planning Department Conditions

1. The development shall be in substantial conformance with the approved site plan, floor plan(s) and building elevations dated with this date of approval. (Except as modified by applicable conditions of approval.)
2. This Use Permit may be modified or revoked by the City Council, Planning Commission, or Zoning Administrator should they determine that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
3. Any change in operational characteristics, hours of operation, expansion in area, or other modification to the approved plans, shall require an amendment to this Use Permit or the processing of a new Use Permit.
4. This approval was based on the particulars of the individual case and does not in and of itself or in combination with other approvals in the vicinity or Citywide constitute a precedent for future approvals or decisions.
5. Use Permit No. UP2010-036 shall expire unless exercised within 24 months from the date of approval as specified in Section 20.54.060 (Time Limits and Extensions) of the Newport Beach Zoning Code, unless an extension is otherwise granted.
6. Should this business be sold or otherwise come under different ownership, any future owners or assignees shall be notified in writing of the conditions of this approval by the current owner or leasing company.
7. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
8. The applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Use Permit.
9. Prior to the issuance of a building permit, the applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Department.

10. *Prior to the issuance of building permits, Fair Share Traffic Fees shall be paid for the outdoor dining area in excess of 25 percent of the interior net public area in accordance with Chapter 15.38 of the Newport Beach Municipal Code.*
11. *A copy of this approval letter shall be incorporated into the Building Department and field sets of plans prior to issuance of the building permits.*
12. *The hours of operation for the interior of the eating and drinking establishment are limited from 9:00 a.m. to 11:00 p.m., daily. The hours of operation for the outdoor patio are limited from 9:00 a.m. to 10:00 p.m., daily. All activities within the outdoor dining area, including cleanup activities, shall cease at the specified closing hour and no later.*
13. *The doors to the outdoor patio area shall be closed by 10:00 p.m., daily, to limit the impact of interior noise to residents in the vicinity.*
14. *[deleted]*
15. *Live entertainment and dancing shall be prohibited as a part of the regular operation.*
16. *A covered wash-out area for refuse containers and kitchen equipment, with minimum useable area dimensions of 36-inches wide, 36-inches deep and 72-inches high, shall be provided, and the area shall drain directly into the sewer system, unless otherwise approved by the Building Director and Public Works Director in conjunction with the approval of an alternate drainage plan.*
17. *The patio floor area in excess of the 25 percent allowance will be deducted from the 15 percent of gross floor area limitation for eating and drinking establishment uses.*
18. *The accessory outdoor dining shall be used only in conjunction with the related adjacent establishment.*
19. *The outdoor patio shall be limited to 259 square feet in area and provide seating for twenty two persons maximum.*
20. *The seating and dining in the outdoor area shall be limited to dining table height (approximately 30 inches) and table surface area of 24 inches by 30 inches minimum. The use of elevated counters, tables, and barstools are prohibited in the outdoor dining area.*
21. *Prior to issuance of building permits, plans for the outdoor dining/patio areas shall be reviewed and approved by the Planning Department. Final material, height, and location of the fence shall be subject to approval by the Building and Planning Department staff.*
22. *The boundary of the accessory outdoor dining area shall be marked through the use of a 36-inch-high rail as shown on the approved plans. Fences, walls, or similar barriers*

shall serve only to define the outdoor dining area and not constitute a permanent all weather enclosure.

23. *The material and color of any awning or umbrella located on the outdoor dining/patio areas shall be subject to review and approval by the Planning Department. No form of advertisement shall be placed on an awning, umbrella or elsewhere in the outdoor patio dining areas. The outdoor patio dining areas, including any awning or umbrella, shall be maintained in a clean orderly condition at all times.*
24. *The installation of roof coverings in addition to the proposed fabric awning shall not have the effect of creating a permanent enclosure. The use of umbrellas for shade purposes shall be permitted. The use of any other type of overhead covering shall be subject to review and approval by the Planning Director and may require an amendment to this permit.*
25. *There shall be no exterior advertising or signs of any kind or type, including advertising directed to the exterior from within, promoting or indicating the availability of alcoholic beverages. Interior displays of alcoholic beverages or signs which are clearly visible to the exterior shall constitute a violation of this condition.*
26. *The type of alcoholic beverage license issued by the California Board of Alcoholic Beverage Control shall be a Type 41 in conjunction with the service of food as the principal use of the facility.*
27. *All owners, managers and employees selling alcoholic beverages shall undergo and successfully complete a certified training program in responsible methods and skills for selling alcoholic beverages. The certified program must meet the standards of the California Coordinating Council on Responsible Beverage Service or other certifying/licensing body, which the State may designate. The establishment shall comply with the requirements of this section within 180 days of the issuance of the certificate of occupancy. Records of each owner's, manager's and employee's successful completion of the required certified training program shall be maintained on the premises and shall be presented upon request by a representative of the City of Newport Beach.*
28. *This approval does not permit the premises to operate as a bar, tavern, cocktail lounge, or nightclub as defined by the Newport Beach Municipal Code.*
29. *No alcoholic beverages shall be consumed on any property adjacent to the licensed premises under the control of the licensee.*
30. *No "happy hour" type of reduced price alcoholic beverage promotion shall be allowed except when offered in conjunction with food ordered from the full service menu. There shall be no reduced price alcoholic beverage promotion after 9:00 p.m.*
31. *The petitioner shall not share any profits or pay any percentage or commission to a promoter or any other person based up on monies collected as a door charge, cover*

charge, or any other form of admission charge, including minimum drink orders or the sale of drinks.

32. *The quarterly gross sales of alcoholic beverages shall not exceed the gross sales of food during the same period. The licensee shall at all times maintain records, which reflect separately the gross sales of food and the gross sales of alcoholic beverages of the licensed business. These records shall be kept no less frequently than on a quarterly basis and shall be made available to the Police Department on command.*
33. *There shall be no on-site radio television, video, film, or other electronic or media broadcasts, including recordings to be broadcasted at a later time, which include the service of alcoholic beverages, without first obtaining an approved special event permit issued by the City of Newport Beach.*
34. *Live entertainment and dancing shall be prohibited as a part of the regular operation of the establishment.*
35. *No games or contests requiring or involving the consumption of alcoholic beverages shall be permitted.*
36. *The approval is only for the establishment of a restaurant type facility as defined by Title 20 of the Municipal Code, with the principal purpose for the sale or service of food and beverages with sale and service of alcoholic beverages incidental to the food use.*
37. *Full meal service shall be provided during all hours of operation.*
38. *Strict adherence to maximum occupancy limits is required.*
39. *A Special Events Permit is required for any event or promotional activity outside the normal operational characteristics of the approved use, as conditioned, or that would attract large crowds, involve the sale of alcoholic beverages, include any form of on-site media broadcast, or any other activities as specified in the Newport Beach Municipal Code to require such permits.*
40. *Any event or activity staged by an outside promoter or entity, where the applicant, operator, owner or his employees or representatives share in any profits, or pay any percentage or commission to a promoter or any other person based upon money collected as a door charge, cover charge or any other form of admission charge is prohibited.*
41. *The proprietor shall actively control any noise generated by the patrons of the facility.*
42. *The operator of the facility shall be responsible for the control of noise generated on the subject facility. Pre-recorded music may be played in the tenant space, provided exterior noise levels outlined below are not exceeded. The noise generated by the proposed use shall comply with the provisions of Chapter 10.26 of the Newport Beach*

Municipal Code. The maximum noise shall be limited to no more than depicted below for the specified time period unless the ambient noise level is higher:

	Between the hours of 7:00AM and 10:00PM		Between the hours of 10:00PM and 7:00AM	
Location	Interior	Exterior	Interior	Exterior
Residential Property	45dBA	55dBA	40dBA	50dBA
Residential Property located within 100 feet of a commercial property	45dBA	60dBA	45dBA	50dBA
Mixed Use Property	45dBA	60dBA	45dBA	50dBA
Commercial Property	N/A	65dBA	N/A	60dBA

43. The operator of the facility shall be responsible for the control of noise generated by the subject facility including, but not limited to, noise generated by patrons, food service operations, and mechanical equipment. All noise generated by the proposed use shall comply with the provisions of Chapter 10.26 and other applicable noise control requirements of the Newport Beach Municipal Code.
44. [deleted]
45. *No amplified music, outside paging system, loudspeaker or other noise generating device are permitted in conjunction with the outdoor dining area.*
46. No outside paging system shall be utilized in conjunction with this establishment.
47. Construction activities shall comply with Section 10.28.040 of the Newport Beach Municipal Code, which restricts hours of noise-generating construction activities that produce noise to between the hours of 7:00 a.m. and 6:30 p.m., Monday through Friday and 8:00 a.m. and 6:00 p.m. on Saturday. Noise-generating construction activities are not allowed on Sundays or Holidays.
48. All proposed signs shall be in conformance with the approved Comprehensive Sign Program for the project site and provisions of Chapter 20.67 of the Newport Beach Municipal Code.
49. No temporary "sandwich" signs or similar temporary signs shall be permitted, either on-site or off-site, to advertise the restaurant.
50. Temporary signs shall be prohibited in the public right-of-way unless otherwise approved by the Public Works Department in conjunction with the issuance of an encroachment permit or encroachment agreement.
51. All trash shall be stored within the building or within dumpsters stored in the trash enclosure (three walls and a self-latching gate) or otherwise screened from view of

neighboring properties, except when placed for pick-up by refuse collection agencies. The trash enclosure shall have a decorative solid roof for aesthetic and screening purposes. The trash dumpsters shall have a top, which shall remain closed at all times, except when being loaded or while being collected by the refuse collection agency.

52. Prior to the final of building permits, the refuse storage facilities should be upgraded to meet the requirements specified by Title 20 by providing self-locking gates.
53. The applicant shall provide a minimum of one common trash enclosure evenly distributed throughout the project site. The size, design and location of trash enclosures shall be subject to the review and approval of the Public Works and Planning Departments prior to issuance of a building permit for new construction. The enclosures shall be located on a four inch concrete pad screened by a six foot high decorative concrete block wall that is compatible with the architectural design of the residential buildings. The enclosures shall incorporate a cover of decorative beams or other roofing material to provide security and visual screening from above.
54. Trash receptacles for patrons shall be conveniently located both inside and outside of the establishment, however, not located on or within any public property or right-of-way.
55. The exterior of the business shall be maintained free of litter and graffiti at all times. The owner or operator shall provide for daily removal of trash, litter debris and graffiti from the premises and on all abutting sidewalks within 20 feet of the premises.
56. The applicant shall ensure that the trash dumpsters and/or receptacles are maintained to control odors. This may include the provision of either fully self-contained dumpsters or periodic steam cleaning of the dumpsters, if deemed necessary by the Planning Department. Cleaning and maintenance of trash dumpsters shall be done in compliance with the provisions of Title 14, including all future amendments (including Water Quality related requirements).
57. Prior to final of the building permits, the applicant shall prepare and submit a practical program for controlling litter, spills, and stains resulting from the use on the site and adjacent areas to the Planning Department for review. The building permit shall not be finaled and use cannot be implemented until that program is approved. The program shall include a detailed time frame for the policing and cleanup of the public sidewalk and right-of-way in front of the subject property as well as the adjacent public right-of-way (25 feet north and south of the subject property) not just in front of the subject tenant space. Failure to comply with that program shall be considered a violation of the use permit and shall be subject to administrative remedy in accordance with Chapter 1.05 of the Newport Beach Municipal Code that includes issuance of a citation of violation and monetary fines.

58. Deliveries and refuse collection for the facility shall be prohibited between the hours of 10:00 p.m. and 8:00 a.m., daily, unless otherwise approved by the Planning Director, and may require an amendment to this use permit.
59. Storage outside of the building in the front or at the rear of the property shall be prohibited, with the exception of the required trash container enclosure.
60. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of Crow Burger Kitchen including, but not limited to Use Permit No. 2010-036 and the determination that the project is exempt under the requirements of the California Environmental Quality Act. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

Building and Fire Department Conditions

61. Public sanitation facilities shall be available to the general public (patrons) during regular business hours of the operation, unless otherwise approved by the Building Department.
62. A building permit is required to allow the change in use to an eating and drinking establishment. The construction plans must comply with the most recent, City-adopted version of the California Building Code.
63. The applicant is required to obtain all applicable permits from the City Building and Fire Departments. The construction plans must comply with the most recent, City-adopted version of the California Building Code. The facility shall be designed to meet exiting and fire protection requirements as specified by the California Building Code and shall be subject to review and approval by the Building Department.
64. *The construction plans must meet all applicable State Disabilities Access requirements.*
65. *Approval from the Orange County Health Department is required prior to the issuance of a building permit.*
66. *A grease interceptor shall be installed prior to the establishment opening for business.*

67. *Complete sets of drawings including architectural, electrical, mechanical, and plumbing plans shall be required at plan check.*
68. Kitchen exhaust fans shall be installed/maintained in accordance with the Uniform Mechanical Code. The issues with regard to the control of smoke and odor shall be directed to the South Coast Air Quality Management District.
69. *The applicant shall provide a Type I hood with a kitchen suppression system for cooking equipment.*
70. *Portable propane heaters shall be prohibited on the outdoor patio. Natural gas or electric heaters are allowed if installed per their listing and the California Electrical or Plumbing Code.*
71. The rear doors of the facility shall remain closed at all times. The use of the rear door shall be limited to deliveries and employee use only. Ingress and egress by patrons is prohibited unless there is an emergency.
72. All exits shall remain free of obstructions and available for ingress and egress at all times.
73. Strict adherence to maximum occupancy limits is required.

Public Works Department Conditions

74. County Sanitation District fees shall be paid prior to the issuance of any building permits.

Attachment No. PC 2

Zoning Administrator Staff Report

**CITY OF NEWPORT BEACH
ZONING ADMINISTRATOR HEARING**

January 13, 2011 Hearing
Agenda Item 4

SUBJECT: Crow Burger Kitchen Minor Use Permit - (PA2010-155)
3107 Newport Boulevard
▪ Minor Use Permit No. UP2010-036

APPLICANT: Steve Geary

PLANNER: Makana Nova, Assistant Planner
(949) 644-3249, mnova@newportbeachca.gov

PROJECT SUMMARY

A minor use permit to allow a food service, eating and drinking establishment with no late hours, a covered outdoor dining patio, and a Type 41 (On Sale Beer and Wine, Eating Place) Alcoholic Beverage Control (ABC) license.

RECOMMENDATION

- 1) Conduct a public hearing; and
- 2) Adopt the draft action letter approving Minor Use Permit No. UP2010-03636 subject to the findings and conditions in the attached draft action letter (Attachment No. ZA 1).

INTRODUCTION

Project Setting

The subject property is bounded by Newport Boulevard, Balboa Boulevard, 30th Street, and 32nd Street. The area in the vicinity of the project site is developed with residential uses across 30th Street, 32nd Street, and adjacent to the southwest corner of the property, retail and restaurant uses along Newport Boulevard, and a public parking lot to the south of the subject property.

Crow Burger Kitchen would occupy a tenant space at the east end of the old Albertson's shopping center where Kentucky Fried Chicken once operated. The shopping center is currently closed for renovation and will reopen next summer as "The Landing". Access to the existing shopping center is obtained through driveways along 32nd Street, Newport Boulevard and Balboa Boulevard. The area of the subject property is 163,786 square feet (approximately 3.76 acres).

VICINITY MAP



GENERAL PLAN



ZONING



LOCATION	GENERAL PLAN	ZONING	CURRENT USE
ON-SITE	CN (Neighborhood Commercial)	CN (Commercial Neighborhood)	Vacant
NORTH	RT (Two-Unit Residential)	R-2 (Two-Unit Residential)	Single-unit and two-unit dwellings
SOUTH	PF (Public Facilities) and RT (Two-Unit Residential)	PF (Public Facilities) and R-2 (Two-Unit Residential)	Retail, public parking lot, and single-unit and two-unit dwellings
EAST	CV (Visitor Serving Commercial)	CV (Visitor Serving Commercial)	Retail
WEST	RT (Two-Unit Residential)	R-2 (Two-Unit Residential)	Single-unit and two-unit dwellings

Background

The shopping center was originally developed in 1960 and currently contains 41,363 square feet of floor area and 208 parking spaces on-site. A renovation of the existing shopping center was approved through Use Permit Nos. UP2009-035, UP2010-002, and Parcel Map No. NP2009-013 (PA2010-153) in February of 2010. Included in the approval was a waiver of five required off-street parking spaces through the approval of a parking management program.

The shopping center is currently vacant as it undergoes renovation. The floor area of the renovated center will total 47,928 square feet of floor area and provide 235 parking spaces. The shopping center will include a 2,515-square-foot addition along the western wing of the existing retail shops (Shops B), a new façade along the entire retail frontage facing 32nd street, a new, 4,000-square-foot bank building in the northwestern corner of the parking lot, and restriping and landscaping within the existing parking lot.

All prior permits for tenants of the existing shopping center are void and all new eating and drinking establishments require use permits. A new take-out service, eating and drinking establishment was approved December 9, 2010 for Chipotle Mexican Grill at the tenant space adjacent to the subject application (3101 Newport Boulevard) through Use Permit No. UP2010-015 and Outdoor Dining Permit No. OD2010-004.

Outdoor dining areas in excess of 25 percent of the interior net public area were not originally accounted for in the shopping center parking management plan. Amendment No. 1 to Use Permit No. UP2010-002 (PA2010-166) was approved December 9, 2010 to allow a waiver of three additional parking spaces through an amendment to the parking management program to allow for the three outdoor dining patios within the shopping center.

Project Description

The applicant requests approval of a minor use permit to allow a food service, eating and drinking establishment with no late hours, a covered outdoor patio, and a Type 41 (On Sale Beer and Wine, Eating Place) Alcoholic Beverage Control (ABC) license. The gross floor area of the establishment is 1,878 square feet, the interior net public area will be 650 square feet, and the outdoor patio will be 259 square feet in area. The establishment will provide a maximum of 42 interior seats and 22 seats on the patio. The requested hours of operation are from 9:00 a.m. to 11:00 p.m., daily.

DISCUSSION

General Plan/Coastal Land Use Plan/Zoning

The Zoning District is Commercial Neighborhood (CN) and the General Plan Land Use Element category is Neighborhood Commercial (CN) for the subject property. The CN land use category is intended to provide for a range of retail and service uses developed

in one or more distinct centers oriented to primarily serve the needs of and maintain compatibility with residential uses in the immediate area. The proposed eating and drinking establishment is consistent with this land use category.

Alcoholic Beverage Sales

The Police Department has prepared an Alcohol Related Statistics report (Attachment No. ZA 2) for the project site. The data from the Alcohol Related Statistics Report is incorporated into the factors for consideration, provided below.

Factors to Consider

Section 20.48.030 (Alcohol Sales) requires the Zoning Administrator to consider certain factors when making the required findings to approve the Use Permit. A discussion of these factors in support of the Use Permit is provided below.

1. *The crime rate in the reporting district and adjacent reporting districts as compared to other areas in the City.*

Reporting District	Part One Crimes (Serious offenses)	Part Two Crimes (All other offenses)	Part One Crimes Rate (per 100,000 people)
RD No. 15	343	242	11,506.43
RD No. 13	112	79	5,812.62
RD No. 16	167	107	6,003.49
Newport Beach	2,884	3,350	3,297.31

The establishment is located within Reporting District 15, which includes McFadden Square, Cannery Village, and Lido Marina Village. The Part One Crimes Rate in Reporting District 15 (RD 15) is higher than the Part One Crimes Rate for the City and adjacent districts (For a map of the City of Newport Beach Reporting Districts, see Attachment No. ZA 3). The crime rate in this reporting district is 484 percent above the City wide reporting district average. The higher crime rate within this reporting district is largely due to the number of visitors to the Balboa Peninsula, the high concentration of alcohol licenses, and high ratio of non-residential to residential uses in the area. While the proposed establishment is located in an area which has a very high concentration of alcohol licenses, staff feels it is appropriate to allow the proposed eating and drinking establishment within the renovated shopping center because it is designed to accommodate both restaurant and retail uses.

2. *The numbers of alcohol-related calls for service, crimes, or arrests in the reporting district and the adjacent reporting districts.*

Reporting District	DUI/Drunk Arrests	Total Arrests	Calls for Service
RD No. 15	361	796	6,663
RD No. 13	39	161	2,554
RD No. 16	110	323	3,261
Newport Beach	1,270	3,595	62,294

RD 15 has a higher number of DUI/Drunk Arrests, Total Arrests, and Calls for service recorded in 2009 compared to the adjacent reporting districts. From January 1, 2010 through November 30, 2010, the Police Department reported 30 calls for service to the subject property, 10 of which were fights or disturbance calls, eight of which were miscellaneous calls for medical aid, alarms, etc. and two of which were alcohol-related. Prior to renovation, the shopping center did not accommodate any uses which possessed ABC licenses allowing alcohol sales for on-site consumption. The existing shopping center has not been subject to a significant number of alcohol related calls for service in the past and the renovated shopping center has been designed to accommodate eating and drinking establishments such as Crow Burger Kitchen.

3. *The proximity of the establishment to residential zoning districts, day care centers, hospitals, park and recreation facilities, places of worship, schools, other similar uses, and any uses that attract minors.*

Residential properties are located 400 feet across 30th Street to the southwest, 220 feet across 32nd Street to the north, and 320 feet to the southwest of the subject tenant space. The proposed use is separated from nearby residences due to the location of the tenant space at the east end of the shopping center and faces the parking lot. The nearest recreational facility, the 32nd Street Beach, is located approximately 1,000 feet to the west of the subject property. The nearest church, St. James Anglican Church, is located 900 feet to the northeast of the subject property. The project site is not located in close proximity to a daycare center or school. The proposed use is surrounded by other commercial uses including several other eating and drinking establishments.

The Balboa Peninsula in general is characterized by a high number of visitors in which commercial and residential zoning districts are located in close proximity to one another. The draft action letter has been conditioned to minimize negative impacts that the proposed eating and drinking establishment may have to surrounding land uses and ensure that the use remains compatible with the surrounding community.

4. *The proximity of the other establishments selling alcoholic beverages for either off-site or on-site consumption.*

The location of the proposed establishment is in close proximity to several establishments with alcohol licenses including Chipotle, Malarky's Irish Pub, Rudy's, and Ho Sum Bistro. The Police Department has prepared an Alcohol Related Statistics report for the project site that indicates an over concentration of alcohol licenses within this statistical area.

Reporting District	Active ABC License	Per Capita
RD No. 15	79	1 per 38 residents
RD No. 13	6	1 per 321 residents
RD No. 16	6	1 per 464 residents
County-wide	5,589	1 per 542 residents

The per capita ratio of 1 license for every 38 residents is higher than the adjacent districts and the average ratio for Orange County. This is due to the higher concentration of commercial land uses and low number of residential properties (For a map of the City of Newport Beach Reporting Districts, see Attachment No. ZA 3). While the proposed establishment is located in close proximity to other establishments selling alcoholic beverages, the location of the proposed restaurant is within a retail shopping center which is designed for such uses.

5. *Whether or not the proposed amendment will resolve any current objectionable conditions.*

The Zoning District for the subject property specifies that the designated land use is intended to serve both residents and visitors. The shopping center and its close proximity to the beach and other commercial districts create a neighborhood focal point for both residents and visitors to stop and eat as they visit the Balboa Peninsula. Adding beer and wine to the menu will compliment the food service and provide for the convenience of customers. The draft action letter has been conditioned to limit objectionable conditions due to noise and trash at the subject establishment. The Police Department has no objections to the operation as proposed principally given the proposed hours of operation, license type, and overall size of the use.

The Police Department has reviewed the concentration and crime statistics and the potential impact of the proposed application on crime and police services and recommends approval of the establishment with a Type 41 ABC license with a closing hour of 10:00 p.m. for the establishment. This closing time will avoid increased crime and minimize the demand on police services in this area.

The Type 41 alcohol license and limited hours of operation effectively eliminate the conversion of the establishment into a late hour bar or tavern. The Police Department has provided recommended conditions of approval related to design and security of the

establishment. Refer to Attachment No. ZA 4 for a copy of the Police Department Recommendation. In addition, all employees serving alcohol will be required to be at least 21 years of age and receive ABC-required Licensee Education on Alcohol and Drugs (LEAD) training.

Outdoor Dining

The proposed establishment includes an outdoor dining patio that accommodates 22 seats. The interior of the establishment will open to the outdoor patio area through a series of louvered doors and the outdoor patio area is covered by an awning structure. The draft action letter has been conditioned to require the closure of the louvered doors by 10:00 p.m. to minimize the impacts of noise to the surrounding residential neighborhood. In addition, the draft action letter has been conditioned to limit the enclosure of the outdoor patio through the construction of temporary or permanent paneling so as not to create additional indoor gross floor area.

The applicant proposes the same business hours for the outdoor patio as the interior of the establishment, which would operate from 9:00 a.m. to 11:00 p.m. The Police Department has recommended a closing hour of 10:00 p.m. for the outdoor patio to minimize the impact of noise to the neighboring residential areas and reduce the impact that the alcohol license will have on the community, police related activities, and calls for police services. Planning Department staff has conditioned the draft action letter to require the closure of the louvered patio doors by 10:00 p.m. to minimize the impacts of noise to the surrounding residents. As a result, Planning Department staff feels this measure is sufficient to limit the potential impacts to the surrounding community and that the overall 11:00 p.m. closing hour will effectively mitigate the potential negative impacts identified by the Police Department.

Parking

The approved parking management plan requires that the shopping center be parked at a rate of one space per 200 square feet of gross floor area and allows for eating and drinking establishments to occupy a maximum 15 percent of the gross floor area. Crow Burger Kitchen is the second eating and drinking establishment to request authorization within the shopping center under renovation, and therefore it falls within the 15 percent allotted for eating and drinking establishments. The proposed project combined with previously permitted eating and drinking establishments accounts for 54 percent of the of the gross floor area allotted for eating and drinking establishments.

Amendment No. 1 to Use Permit No. UP2010-002 was approved on December 9, 2010 to allow a reduction in the required off-street parking by three parking spaces. Therefore, sufficient parking will be provided to allow for the outdoor patio areas in excess of the 25 percent of the interior net public area at Crow Burger. A square footage tracking table showing the approved square footage for Crow Burger in relation to the shopping center is provided as Attachment No. ZA 5.

Use Permit Findings

In accordance with Sections 20.52.020.F, the Zoning Administrator must make the following findings for approval:

1. The use is consistent with the General Plan and any applicable specific plan.
2. The use is allowed within the applicable zoning district and complies with all other applicable provisions of the Zoning Code and the Municipal Code.
3. The design, location, size, and operating characteristics of the use are compatible with the allowed uses in the vicinity.
4. The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle (e.g., fire and medical) access and public services and utilities.
5. Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the proposed use.

The proposed use is consistent with the General Plan, Local Coastal Program Coastal Land Use Plan, and Zoning Code. Adequate parking is provided for the project site within the parking pool provided for the shopping center. The hours of operation are compatible with uses in the area and the 11:00 p.m. closing hour will ensure the establishment does not operate as a late hour bar or lounge. Beer and wine will be provided as a convenience to the public, and operational conditions of approval have been included to ensure the restaurant is compatible with the surrounding neighborhood. Staff believes the findings for approval can be made and the facts in support of the required findings are presented in the draft action letter (Attachment No. ZA 1).

Summary

Staff recommends approval of a use permit per the conditions of approval provided in the attached draft action letter for a food service, eating and drinking establishment with a Type 41 (On Sale Beer and Wine, Eating Place) ABC license and an outdoor dining patio as requested.

Alternatives

If the Zoning Administrator does not believe the findings for approval can be made, the Zoning Administrator may deny the subject applications. In addition, the Zoning Administrator may approve a modified project or modify conditions of approval to

address areas of concern. Should the Zoning Administrator choose to do so, staff will return with a revised action letter incorporating new findings and/or conditions.

Environmental Review

The project is categorically exempt under Section 15303, of the California Environmental Quality Act (CEQA) Guidelines - Class 3 (New Construction or Conversion of Small Structures). The Class 3 exemption includes a store, motel, office, restaurant, or similar structure not involving significant amounts of hazardous substances, and not exceeding 2,500 square feet in floor area. This exemption also includes accessory (appurtenant) structures including garages, carports, patios, swimming pools, and fences.

The proposed project involves the establishment of a restaurant in an existing tenant space and the construction of a new outdoor patio. The proposed use is less than 2,500 square feet. Therefore, both the interior use and outdoor patio qualify for a categorical exemption under Class 3.

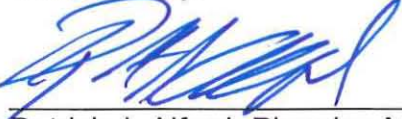
Public Notice

Notice of this hearing was published in the Daily Pilot, mailed to property owners within 300 feet of the property and posted at the site a minimum of 10 days in advance of this hearing consistent with the Municipal Code. Additionally, the item appeared upon the agenda for this meeting, which was posted at City Hall and on the City website.

Prepared by:


Makana Nova, Assistant Planner

Submitted by:


Patrick J. Alford, Planning Manager

ATTACHMENTS

- ZA 1 Draft Action Letter
- ZA 2 Alcohol Related Statistics
- ZA 3 Newport Beach Reporting Districts
- ZA 4 Police Department Recommendation
- ZA 5 The Landing Square Footage Tracking Table
- ZA 6 Project plans

Attachment No. PC 3

Zoning Administrator Action Letter



NOTICE OF ZONING ADMINISTRATOR ACTION

PLANNING DEPARTMENT
3300 NEWPORT BOULEVARD
NEWPORT BEACH, CA 92663
(949) 644-3200 FAX (949) 644-3229

January 27, 2011

Steve Geary
2325 E. Coast Highway
Newport Beach, CA 92625

Application No. **Use Permit No. UP2010-036 (PA2010-155)**
Site Address **3107 Newport Boulevard**
 Crow Burger Kitchen Use Permit

On January 27, 2011, the Zoning Administrator approved the above referenced application based on the findings and conditions in the attached action letter.

By: 
Greg Ramirez, Zoning Administrator

GR/mn

APPEAL PERIOD: Modification Permit applications do not become effective until 14 days after the date of action, during which time an appeal may be filed with the Planning Commission Secretary in accordance with the provisions of the Newport Beach Municipal Code. Tentative Parcel Map, Condominium Conversion, Lot Merger, and Lot Line Adjustment applications do not become effective until 10 days following the date of action, during which time an appeal may be filed with the Planning Commission Secretary in accordance with the provisions of the Newport Beach Municipal Code. For additional information on filing an appeal, contact the Planning Department at 949 644-3200.

cc:

property owner

Catellus

Attn: Sean Whiskeman
66 Franklin Street, #200
Oakland, CA 94607

contact

Architects Design Consortium Inc.
Attn: Craig Oka
4875 E. La Palma Avenue Suite 607
Anaheim, CA 92807



ZONING ADMINISTRATOR ACTION LETTER

PLANNING DEPARTMENT
3300 NEWPORT BOULEVARD
NEWPORT BEACH, CA 92663
(949) 644-3200 FAX (949) 644-3229

Application No.	Use Permit No. UP2010-036 (PA2010-155)
Applicant	Steve Geary
Site Address	3107 Newport Boulevard Crow Burger Kitchen Use Permit
Legal Description	Lots E, F, and H on Parcel Map, as per map filed in book 32, page 41 of Parcel Maps, in the office of the County Recorder in the County of Orange, together with that portion of Lake Avenue shown as Parcel "G" on said Parcel Map, vacated and abandoned by Resolution No. 1012 of the City Council of Newport Beach, recorded May 15, 1981 as Instrument No. 40308 in book 14079, page 939 of official records in the office of said County Recorder, also together with a portion of Section 28, Township 6 south, range 10 west, San Bernardino Meridian, as per Parcel Nos. 1, 2, and 3 of the official plat filed in the district land office August 4, 1980

On **January 27, 2011**, the Zoning Administrator approved the following: A minor use permit to allow a food service, eating and drinking establishment with no late hours, a covered outdoor patio, and a Type 41 (On Sale Beer and Wine, Eating Place) Alcoholic Beverage Control (ABC) license. The gross floor area of the establishment is 1,878 square feet, the interior net public area will be 650 square feet, and the outdoor patio will be 259 square feet in area. The establishment will provide a maximum of 42 interior seats and 22 seats on the patio. The hours of operation are from 9:00 a.m. to 11:00 p.m., daily and 9:00 a.m. to 10:00 p.m. for the outdoor patio. The property is located in the CN (Commercial Neighborhood) zoning district. The Zoning Administrator's approval is based on the following findings and subject to the following conditions.

REQUIRED FINDINGS

Finding

- A. *The project has been reviewed, and it qualifies for a categorical exemption pursuant to Section 15303 of the California Environmental Quality Act under Class 3 (New Construction or Conversion of Small Structures) of the Implementing Guidelines of the California Environmental Quality Act.*

Facts in Support of Finding

- A-1. The Class 3 exemption includes a store, motel, office, restaurant or similar structure not involving significant amounts of hazardous substances, and not exceeding 2,500 square feet in floor area. This exemption also includes accessory (appurtenant) structures including garages, carports, patios, swimming pools, and fences. The proposed project involves the establishment of a restaurant in an existing retail tenant space and the construction of a new outdoor patio. The proposed use is less than 2,500 square feet. Therefore, proposed use and outdoor patio qualifies for a categorical exemption under Class 3.

In accordance with Section 20.48.030 (Alcohol Sales) of the Newport Beach Municipal Code, the following findings and facts in support of the findings for a use permit are set forth:

Finding

- B. *The use is consistent with the purpose and intent of Section 20.48.030 (Alcohol Sales of the Zoning Code).*

Facts in Support of Finding

- B-1. The project has been reviewed and conditioned to ensure that the purpose and intent of Section 20.48.030 (Alcohol Sales) of the Zoning Code is maintained and that a healthy environment for residents and businesses is preserved. The service of beer and wine is intended for the convenience of customers dining at the restaurant. Operational conditions of approval recommended by the Police Department relative to the sale of alcoholic beverages will ensure compatibility with the surrounding uses and minimize alcohol related impacts.

In accordance with Section 20.52.020.F of the Newport Beach Municipal Code, the following findings and facts in support of the findings for a use permit are set forth:

Finding

- C. *The use is consistent with the General Plan and any applicable specific plan;*

Facts in Support of Finding

- C-1. The General Plan land use designation for this site is CN (Neighborhood Commercial). The CN designation is intended to provide for a limited range of retail and service uses developed in one or more distinct centers oriented to serve the needs of and maintain compatibility with residential uses in the immediate area. An eating and drinking establishment with alcohol sales and accessory outdoor dining is a consistent use within this land use designation. Restaurant uses can

be expected to be found in this area and similar locations and are complementary to the surrounding commercial and residential uses.

- C-2. Eating and drinking establishments are common in the vicinity along the Balboa Peninsula and are frequented by visitors and residents alike. The establishment is compatible with the land uses permitted within the surrounding neighborhood. The new establishment will improve and revitalize the existing retail building and the surrounding neighborhood.
- C-4. The subject property is not part of a specific plan area.

Finding

- D. The use is allowed within the applicable zoning district and complies with all other applicable provisions of this Zoning Code and the Municipal Code;*

Facts in Support of Finding

- D-1. The site is located in the CN (Commercial Neighborhood) Zoning District. The CN zoning district is intended to provide for areas appropriate for a limited range of retail and service uses developed in one or more distinct centers oriented to serve primarily the needs of and maintain compatibility with residential uses in the immediate area. The proposed food service, eating and drinking establishment with beer and wine alcohol service and an outdoor patio is consistent with land uses permitted by the CN Zoning District.

Finding

- E. The design, location, size, and operating characteristics of the use are compatible with the allowed uses in the vicinity;*

Facts in Support of Finding

- E-1. The operation of the restaurant will be restricted to the hours between 9:00 a.m. and 11:00 p.m., daily. The operation of the outdoor patio will be restricted to the hours between 9:00 a.m. and 10:00 p.m., daily.
- E-2. A restaurant has been operated in this location since 1971 pursuant to Use Permit No. 1551 and has not proven detrimental to the area. The tenant space within the shopping center has operated as an eating and drinking establishment in the past and demonstrated the location's capability of operating as a compatible use with other land uses in the vicinity.
- E-3. The project includes conditions of approval to ensure that potential conflicts are minimized to the greatest extent possible. The restaurant is oriented toward the parking lot and is located approximately 225 feet from residential properties across 32nd Street. The use permit has been conditioned to require the folding

doors and the outdoor patio area to be closed by 10:00 p.m. so that the establishment will comply with exterior noise standards and shield the restaurant activity from the residential uses across 32nd Street. The applicant is also required to control trash and litter around the subject property.

- E-4. The operational conditions of approval recommended by the Police Department relative to the sale of alcoholic beverages will ensure compatibility with the surrounding uses and minimize alcohol related impacts. The project has been conditioned to ensure the welfare of the surrounding community so that the business remains a restaurant and does not become a bar or tavern. The project has been conditioned so that no dancing or live entertainment will be permitted on the premises.
- E-5. The applicant is required to install a grease interceptor, obtain Health Department approval prior to opening for business, and comply with the California Building Code to ensure the safety and welfare of customers and employees within the establishment.

Finding

- F. The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle (e.g., fire and medical) access and public services and utilities; and*

Facts in Support of Finding

- F-1. The project site is located within an existing retail building and the tenant space is designed and developed for an eating and drinking establishment. The design, size, location, and operating characteristics of the use are compatible with the surrounding neighborhood.
- F-2. Adequate public and emergency vehicle access, public services, and utilities are provided within the renovated shopping center.
- F-3. The tenant improvements to the project site will comply with all Building, Public Works, and Fire Codes. All ordinances of the City and all conditions of approval will be complied with.

Finding

- G. Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, a safety, or general welfare of persons residing or working in the neighborhood of the proposed use.*

Facts in Support of Finding

- G-1. The project has been reviewed and includes conditions of approval to ensure that potential conflicts with the surrounding land uses are minimized to the greatest extent possible. The operator is required to take reasonable steps to discourage and correct objectionable conditions that constitute a nuisance in parking areas, sidewalks and areas surrounding the subject property and adjacent properties during business hours, if directly related to the patrons of the establishment. The outdoor patio and louvered folding doors must be closed by 10:00 p.m. to limit the exterior noise to the surrounding residents.
- G-2. The food service, eating and drinking establishment will serve the surrounding residential community. The proposed establishment will provide dining services as a public convenience to the surrounding neighborhood. This will revitalize the project site and provide an economic opportunity for the property owner to update the retail tenants and services, which best serve the quality of life for the surrounding residential community.

CONDITIONS OF APPROVAL

Planning Department Conditions

1. The development shall be in substantial conformance with the approved site plan, floor plan(s) and building elevations dated with this date of approval. (Except as modified by applicable conditions of approval.)
2. This Use Permit may be modified or revoked by the City Council, Planning Commission, or Zoning Administrator should they determine that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
3. Any change in operational characteristics, hours of operation, expansion in area, or other modification to the approved plans, shall require an amendment to this Use Permit or the processing of a new Use Permit.
4. This approval was based on the particulars of the individual case and does not in and of itself or in combination with other approvals in the vicinity or Citywide constitute a precedent for future approvals or decisions.
5. Use Permit No. UP2010-036 shall expire unless exercised within 24 months from the date of approval as specified in Section 20.54.060 (Time Limits and Extensions) of the Newport Beach Zoning Code, unless an extension is otherwise granted.

6. Should this business be sold or otherwise come under different ownership, any future owners or assignees shall be notified in writing of the conditions of this approval by the current owner or leasing company.
7. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
8. The applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Use Permit.
9. Prior to the issuance of a building permit, the applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Department.
10. *Prior to the issuance of building permits, Fair Share Traffic Fees shall be paid for the outdoor dining area in excess of 25 percent of the interior net public area in accordance with Chapter 15.38 of the Newport Beach Municipal Code.*
11. A copy of this approval letter shall be incorporated into the Building Department and field sets of plans prior to issuance of the building permits.
12. *The hours of operation for the interior of the eating and drinking establishment are limited from 9:00 a.m. to 11:00 p.m., daily. The hours of operation for the outdoor patio are limited from 9:00 a.m. to 10:00 p.m., daily. All activities within the outdoor dining area, including cleanup activities, shall cease at the specified closing hour and no later.*
13. *The doors to the outdoor patio area shall be closed by 10:00 p.m., daily, to limit the impact of interior noise to residents in the vicinity.*
14. *[deleted]*
15. *Live entertainment and dancing shall be prohibited as a part of the regular operation.*
16. *A covered wash-out area for refuse containers and kitchen equipment, with minimum useable area dimensions of 36-inches wide, 36-inches deep and 72-inches high, shall be provided, and the area shall drain directly into the sewer system, unless otherwise approved by the Building Director and Public Works Director in conjunction with the approval of an alternate drainage plan.*
17. *The patio floor area in excess of the 25 percent allowance will be deducted from the 15 percent of gross floor area limitation for eating and drinking establishment uses.*

18. *The accessory outdoor dining shall be used only in conjunction with the related adjacent establishment.*
19. *The outdoor patio shall be limited to 259 square feet in area and provide seating for twenty two persons maximum.*
20. *The seating and dining in the outdoor area shall be limited to dining table height (approximately 30 inches) and table surface area of 24 inches by 30 inches minimum. The use of elevated counters, tables, and barstools are prohibited in the outdoor dining area.*
21. *Prior to issuance of building permits, plans for the outdoor dining/patio areas shall be reviewed and approved by the Planning Department. Final material, height, and location of the fence shall be subject to approval by the Building and Planning Department staff.*
22. *The boundary of the accessory outdoor dining area shall be marked through the use of a 36-inch-high rail as shown on the approved plans. Fences, walls, or similar barriers shall serve only to define the outdoor dining area and not constitute a permanent all weather enclosure.*
23. *The material and color of any awning or umbrella located on the outdoor dining/patio areas shall be subject to review and approval by the Planning Department. No form of advertisement shall be placed on an awning, umbrella or elsewhere in the outdoor patio dining areas. The outdoor patio dining areas, including any awning or umbrella, shall be maintained in a clean orderly condition at all times.*
24. *The installation of roof coverings in addition to the proposed fabric awning shall not have the effect of creating a permanent enclosure. The use of umbrellas for shade purposes shall be permitted. The use of any other type of overhead covering shall be subject to review and approval by the Planning Director and may require an amendment to this permit.*
25. *There shall be no exterior advertising or signs of any kind or type, including advertising directed to the exterior from within, promoting or indicating the availability of alcoholic beverages. Interior displays of alcoholic beverages or signs which are clearly visible to the exterior shall constitute a violation of this condition.*
26. *The type of alcoholic beverage license issued by the California Board of Alcoholic Beverage Control shall be a Type 41 in conjunction with the service of food as the principal use of the facility.*
27. *All owners, managers and employees selling alcoholic beverages shall undergo and successfully complete a certified training program in responsible methods and skills for selling alcoholic beverages. The certified program must meet the*

standards of the California Coordinating Council on Responsible Beverage Service or other certifying/licensing body, which the State may designate. The establishment shall comply with the requirements of this section within 180 days of the issuance of the certificate of occupancy. Records of each owner's, manager's and employee's successful completion of the required certified training program shall be maintained on the premises and shall be presented upon request by a representative of the City of Newport Beach.

28. *This approval does not permit the premises to operate as a bar, tavern, cocktail lounge, or nightclub as defined by the Newport Beach Municipal Code.*
29. *No alcoholic beverages shall be consumed on any property adjacent to the licensed premises under the control of the licensee.*
30. *No "happy hour" type of reduced price alcoholic beverage promotion shall be allowed except when offered in conjunction with food ordered from the full service menu. There shall be no reduced price alcoholic beverage promotion after 9:00 p.m.*
31. *The petitioner shall not share any profits or pay any percentage or commission to a promoter or any other person based up on monies collected as a door charge, cover charge, or any other form of admission charge, including minimum drink orders or the sale of drinks.*
32. *The quarterly gross sales of alcoholic beverages shall not exceed the gross sales of food during the same period. The licensee shall at all times maintain records, which reflect separately the gross sales of food and the gross sales of alcoholic beverages of the licensed business. These records shall be kept no less frequently than on a quarterly basis and shall be made available to the Police Department on command.*
33. *There shall be no on-site radio television, video, film, or other electronic or media broadcasts, including recordings to be broadcasted at a later time, which include the service of alcoholic beverages, without first obtaining an approved special event permit issued by the City of Newport Beach.*
34. *Live entertainment and dancing shall be prohibited as a part of the regular operation of the establishment.*
35. *No games or contests requiring or involving the consumption of alcoholic beverages shall be permitted.*
36. *The approval is only for the establishment of a restaurant type facility as defined by Title 20 of the Municipal Code, with the principal purpose for the sale or service of food and beverages with sale and service of alcoholic beverages incidental to the food use.*

37. *Full meal service shall be provided during all hours of operation.*
38. *Strict adherence to maximum occupancy limits is required.*
39. *A Special Events Permit is required for any event or promotional activity outside the normal operational characteristics of the approved use, as conditioned, or that would attract large crowds, involve the sale of alcoholic beverages, include any form of on-site media broadcast, or any other activities as specified in the Newport Beach Municipal Code to require such permits.*
40. Any event or activity staged by an outside promoter or entity, where the applicant, operator, owner or his employees or representatives share in any profits, or pay any percentage or commission to a promoter or any other person based upon money collected as a door charge, cover charge or any other form of admission charge is prohibited.
41. The proprietor shall actively control any noise generated by the patrons of the facility.
42. The operator of the facility shall be responsible for the control of noise generated on the subject facility. Pre-recorded music may be played in the tenant space, provided exterior noise levels outlined below are not exceeded. The noise generated by the proposed use shall comply with the provisions of Chapter 10.26 of the Newport Beach Municipal Code. The maximum noise shall be limited to no more than depicted below for the specified time period unless the ambient noise level is higher:

	Between the hours of 7:00AM and 10:00PM		Between the hours of 10:00PM and 7:00AM	
Location	Interior	Exterior	Interior	Exterior
Residential Property	45dBA	55dBA	40dBA	50dBA
Residential Property located within 100 feet of a commercial property	45dBA	60dBA	45dBA	50dBA
Mixed Use Property	45dBA	60dBA	45dBA	50dBA
Commercial Property	N/A	65dBA	N/A	60dBA

43. The operator of the facility shall be responsible for the control of noise generated by the subject facility including, but not limited to, noise generated by patrons, food service operations, and mechanical equipment. All noise generated by the proposed use shall comply with the provisions of Chapter 10.26 and other applicable noise control requirements of the Newport Beach Municipal Code.
44. [deleted]

45. *No amplified music, outside paging system, loudspeaker or other noise generating device are permitted in conjunction with the outdoor dining area.*
46. No outside paging system shall be utilized in conjunction with this establishment.
47. Construction activities shall comply with Section 10.28.040 of the Newport Beach Municipal Code, which restricts hours of noise-generating construction activities that produce noise to between the hours of 7:00 a.m. and 6:30 p.m., Monday through Friday and 8:00 a.m. and 6:00 p.m. on Saturday. Noise-generating construction activities are not allowed on Sundays or Holidays.
48. All proposed signs shall be in conformance with the approved Comprehensive Sign Program for the project site and provisions of Chapter 20.67 of the Newport Beach Municipal Code.
49. No temporary "sandwich" signs or similar temporary signs shall be permitted, either on-site or off-site, to advertise the restaurant.
50. Temporary signs shall be prohibited in the public right-of-way unless otherwise approved by the Public Works Department in conjunction with the issuance of an encroachment permit or encroachment agreement.
51. All trash shall be stored within the building or within dumpsters stored in the trash enclosure (three walls and a self-latching gate) or otherwise screened from view of neighboring properties, except when placed for pick-up by refuse collection agencies. The trash enclosure shall have a decorative solid roof for aesthetic and screening purposes. The trash dumpsters shall have a top, which shall remain closed at all times, except when being loaded or while being collected by the refuse collection agency.
52. Prior to the final of building permits, the refuse storage facilities should be upgraded to meet the requirements specified by Title 20 by providing self-locking gates.
53. The applicant shall provide a minimum of one common trash enclosure evenly distributed throughout the project site. The size, design and location of trash enclosures shall be subject to the review and approval of the Public Works and Planning Departments prior to issuance of a building permit for new construction. The enclosures shall be located on a four inch concrete pad screened by a six foot high decorative concrete block wall that is compatible with the architectural design of the residential buildings. The enclosures shall incorporate a cover of decorative beams or other roofing material to provide security and visual screening from above.
54. Trash receptacles for patrons shall be conveniently located both inside and outside of the establishment, however, not located on or within any public property or right-of-way.

55. The exterior of the business shall be maintained free of litter and graffiti at all times. The owner or operator shall provide for daily removal of trash, litter debris and graffiti from the premises and on all abutting sidewalks within 20 feet of the premises.
56. The applicant shall ensure that the trash dumpsters and/or receptacles are maintained to control odors. This may include the provision of either fully self-contained dumpsters or periodic steam cleaning of the dumpsters, if deemed necessary by the Planning Department. Cleaning and maintenance of trash dumpsters shall be done in compliance with the provisions of Title 14, including all future amendments (including Water Quality related requirements).
57. Prior to final of the building permits, the applicant shall prepare and submit a practical program for controlling litter, spills, and stains resulting from the use on the site and adjacent areas to the Planning Department for review. The building permit shall not be finalized and use cannot be implemented until that program is approved. The program shall include a detailed time frame for the policing and cleanup of the public sidewalk and right-of-way in front of the subject property as well as the adjacent public right-of-way (25 feet north and south of the subject property) not just in front of the subject tenant space. Failure to comply with that program shall be considered a violation of the use permit and shall be subject to administrative remedy in accordance with Chapter 1.05 of the Newport Beach Municipal Code that includes issuance of a citation of violation and monetary fines.
58. Deliveries and refuse collection for the facility shall be prohibited between the hours of 10:00 p.m. and 8:00 a.m., daily, unless otherwise approved by the Planning Director, and may require an amendment to this use permit.
59. Storage outside of the building in the front or at the rear of the property shall be prohibited, with the exception of the required trash container enclosure.
60. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of Crow Burger Kitchen including, but not limited to Use Permit No. 2010-036 and the determination that the project is exempt under the requirements of the California Environmental Quality Act. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the

indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

Building and Fire Department Conditions

61. Public sanitation facilities shall be available to the general public (patrons) during regular business hours of the operation, unless otherwise approved by the Building Department.
62. A building permit is required to allow the change in use to an eating and drinking establishment. The construction plans must comply with the most recent, City-adopted version of the California Building Code.
63. The applicant is required to obtain all applicable permits from the City Building and Fire Departments. The construction plans must comply with the most recent, City-adopted version of the California Building Code. The facility shall be designed to meet exiting and fire protection requirements as specified by the California Building Code and shall be subject to review and approval by the Building Department.
64. *The construction plans must meet all applicable State Disabilities Access requirements.*
65. *Approval from the Orange County Health Department is required prior to the issuance of a building permit.*
66. *A grease interceptor shall be installed prior to the establishment opening for business.*
67. *Complete sets of drawings including architectural, electrical, mechanical, and plumbing plans shall be required at plan check.*
68. Kitchen exhaust fans shall be installed/maintained in accordance with the Uniform Mechanical Code. The issues with regard to the control of smoke and odor shall be directed to the South Coast Air Quality Management District.
69. *The applicant shall provide a Type I hood with a kitchen suppression system for cooking equipment.*
70. *Portable propane heaters shall be prohibited on the outdoor patio. Natural gas or electric heaters are allowed if installed per their listing and the California Electrical or Plumbing Code.*
71. The rear doors of the facility shall remain closed at all times. The use of the rear door shall be limited to deliveries and employee use only. Ingress and egress by patrons is prohibited unless there is an emergency.

72. All exits shall remain free of obstructions and available for ingress and egress at all times.
73. Strict adherence to maximum occupancy limits is required.

Public Works Department Conditions

74. County Sanitation District fees shall be paid prior to the issuance of any building permits.

PUBLIC NOTICE

Notice of this application was mailed to all owners of property within 300 feet of the boundaries of the site (excluding intervening rights-of-way and waterways) including the applicant and posted on the subject property at least 10 days prior to the decision date, consistent with the provisions of the Municipal Code.

APPEAL PERIOD

The applicant or any interested party may appeal the decision of the Zoning Administrator to the Planning Commission by a written request to the Planning Director within 14 days of the action date. A \$4,280.00 filing fee shall accompany any appeal filed. For additional information on filing an appeal, contact the Planning Department at 949 644-3200.

By: _____

Gregg Ramirez, Zoning Administrator

GR/mkn

Attachments:

Vicinity Map

VICINITY MAP



Use Permit No. UP2010-036
PA2010-155

3107 Newport Boulevard

Attachment No. PC 4

Commissioner Unsworth's
Memorandum Requesting Appeal

CITY OF NEWPORT BEACH
Community Development Department
Planning Division
3300 Newport Boulevard, Bldg. C
Newport Beach, CA 92663

APPLICATION TO APPEAL THE DECISION OF THE

☒ **ZONING ADMINISTRATOR**

☐ **PLANNING DIRECTOR**

Project No. PA2010-155 Activity No. UP2010-036

Site Address 3107 Newport Boulevard

Name of Appellant
or person filing Charles W. Unsworth Phone No. 949 675-1950

Date of action: January 27, 2011

(Description of application) A minor use permit to allow a food service, eating and drinking establishment with no late hours, a covered outdoor patio, and a Type 41 (On Sale Beer and Wine, Eating Place) Alcoholic Beverage Control (ABC) license. The gross floor area of the establishment is 1,878 square feet, the interior net public area will be 650 square feet, and the outdoor patio will be 259 square feet in area. The establishment will provide a maximum of 42 interior seats and 22 seats on the patio. The hours of operation are from 9:00 a.m. to 11:00 p.m., daily and 9:00 a.m. to 10:00 p.m. for the outdoor patio.

Reasons for Appeal SEE ATTACHED LETTER DATED FEBRUARY 3, 2011

Signature of Appellant _____

Date _____

FOR OFFICE USE ONLY

Received by: _____ Fee Received: _____

Date Appeal filed and Administrative Fee received: _____

NOTE: Please submit:

- 11x17 set of plans – 12 each
- One set of mailing labels (Avery 5960) for property owners within 300 ft. radius of subject property

APPEALS: Municipal Code Sec. 20.64

Appeal Fee: \$4,280.00 pursuant to City Council Resolution 2009-86

(Deposit funds with Cashier in Account #2700-5000)

CHARLES W. UNSWORTH

3419 Via Lido #247
Newport Beach, California 92663
Phone (949)675-1950
Fax (949)566-9822

**RECEIVED BY
PLANNING DEPARTMENT**

February 3, 2011

FEB 07 2011

Joel Fick, Acting Community Development Director
James Campbell, Acting Planning Director
Planning Department
City of Newport Beach
3300 Newport Boulevard
Newport Beach, California 92663

CITY OF NEWPORT BEACH

Re: Appeal of the Zoning Administrator's Grant of Use Permit No. UP2010-036
(PA2010-155) for 3107 Newport Boulevard

Gentlemen:

As a Planning Commissioner of the Newport Beach Planning Commission, I hereby appeal and/or call for review of the captioned grant of the captioned Use Permit for the following reasons:

1. Condition No. 6 of Exhibit A, Conditions of Approval of Planning Commission Resolution No. 1826 for the Landing Project, which was passed, approved and adopted December 9, 2010 provides as follows: "6. All eating and drinking establishments will be required to obtain separate use permits. Any separate discretionary approvals will regulate the operation of the specific use within the project site. Nothing in this resolution and or conditions ensures any square footage for any restaurant use or application." That condition was imposed under authority of the Zoning Code ("Old Zoning Code") which was in effect prior to adoption of the new Zoning Code. The Old Zoning Code and Condition No. 6 required a use permit to be granted by the Planning Commission as opposed to a minor use permit authorized by the new Zoning Code. The adoption of the new Zoning Code did not change the intent or legal effect of Condition No. 6. Therefore, a use permit for the captioned Project must be granted by the Planning Commission, not a minor use permit by the Zoning Administrator or Planning Director.

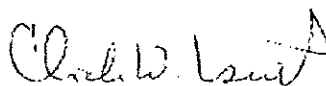
Joel Fick
James Campbell
February 3, 2011
Page 2

2. The Use Permit for the Chipotle restaurant (Resolution No. 1827) located within the Landing was also approved on December 9, 2010. Service of alcohol was prohibited in its outdoor dining area. Prior to granting the captioned Use Permit, the Planning Commission should hear evidence as to why one applicant should be allowed and one applicant not allowed the right to serve alcohol in its outdoor dining area. The Zoning Administrator's decision did not substantiate such a distinction.
3. Prior to granting any rights to serve alcohol in outdoor dining areas and/or establishing hours of operations for serving alcohol the Planning Commission should be fully apprised of the impact and relationship between the proposed Use Permit or any other use permit or minor use permit and the newly enacted Operator License Ordinance.

Because the hearing will be de novo, other questions and issues, including, but not limited to, compliance with Condition No. 25, the Zoning Code section under which applicant is to operate, and the date of the Zoning Administrator's action, will be open for discussion and decision.

Thank you and your department for your ongoing fine and difficult work.

Yours truly,


Charles W. Unsworth
Planning Commissioner

/ccu

cc: Leilani Brown, City Clerk

Attachment No. PC 5

Commissioner Hawkin's
Memorandum Requesting Appeal

RECEIVED BY
PLANNING DEPARTMENT

Law Offices of Robert C. Hawkins

110 Newport Center Drive, Suite 200
Newport Beach, California 92660
(949) 650-5550
Fax: (949) 650-1181

FEB 09 2011

CITY OF NEWPORT BEACH

FAX COVER SHEET

TRANSMITTED TO:

NAME	FAX NUMBER	PHONE NUMBER
Joel Fick, Acting CD Director James Campbell, Acting Planning Director	(949) 644-3229	
Leilani Brown, City Clerk	(949) 644-3039	

From: Robert C. Hawkins

Client/Matter: Planning Commission

Date: February 9, 2011

Documents: Further Appeal of Use Permit No. UP2010-036 (PA2010-155)

Pages: 3*

COMMENTS: Original will follow as indicated.

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LAW OFFICES OF ROBERT C. HAWKINS

February 9, 2011

Via Facsimile and Hand Delivery

Joel Fick, Acting Community Development Director
James Campbell, Acting Planning Director
Planning Department
City of Newport Beach
3300 Newport Blvd.
Newport Beach, California 92663

Re: Further Appeal of the Zoning Administrator's Grant of Use Permit No. UP2010-036 (PA2010-155) for Crow Burger Kitchen Use Permit at 3107 Newport Blvd.

Greetings:

As you know, I am honored to serve as a member of the City's Planning Commission for the City of Newport Beach. I understand that Mr. Charles Unsworth on the Planning Commission has appealed/called for review the captioned approval. As a planning commissioner and pursuant to the Municipal Code, I also appeal the captioned action for reasons similar to those in Mr. Unsworth's February 3, 2011 appeal letter (the "Appeal").

At the outset and complimentary with the Appeal, at the December 9, 2010 Planning Commission hearing in connection with the Landing Use Permit No. UP 2010-002, the Commission understood that, as Chairman McDaniel said that when the developer brings other applications, we (the Planning Commission) will have an opportunity to hear it. Indeed, the Acting Planning Director also talked about other applications would come before the Planning Commission. See tape of December 9, 2010 meeting. The captioned decision conflicts with this understanding and intent embodied in the Landing Use Permit.

In addition, I appeal the decision for the following additional reasons: Finding B cannot be made; Findings C-G cannot be made because the presence of alcohol in the outdoor dining area conflicts with the General Plan and the Zoning Code, and is incompatible with adjacent residential uses; the Conditions of Approval are internally inconsistent. Further, the date of the captioned decision is wrong and the appeals are timely.

110 Newport Center Drive, Suite 200
Newport Beach, California 92660
(949) 650-5550
Fax: (949) 650-1181

Joel Fick, Acting Community Development Director
James Campbell, Acting Planning Director

- 2 -

February 9, 2011

First, Finding B states: "All eating and drinking establishments will be required to obtain separate use permits."

"The use is consistent with the purpose and intent of Section 20.48.030 (Alcohol Sales of the Zoning Code."

Among other things, the facts in support of this finding state:

"The service of beer and wine is intended for the convenience of customers dining at the restaurant."

This fact does not support the suggested finding because Section 20.48.030 forbids consumption of alcohol on site. Section 20.48.030 addresses off sale alcohol uses such as liquor stores. Because the findings cannot be made for Section 20.48.030 uses and such uses conflict with the applicant's desired uses, this finding is inappropriate.

Further, assuming that this is a typographic or clerical error, the finding required for approval under Section 20.48.090 cannot be made for the reasons set forth below. The presence of alcoholic beverages in the outdoor dining area is inconsistent with the General Plan, the Zoning Code, is incompatible with adjacent residential uses, and is detrimental to the health, safety, and welfare of the area and its residents.

Second, Commissioner Unsworth has challenged the captioned Use Permit's grant of alcohol in the outdoor patio as conflicting with the Chipotle Use Permit No. UP2010-017 and Accessory Outdoor Dining Permit No. 002010-004, and perhaps being unequal treatment. Although I support this contention, I also believe that the captioned Use Permit's grant of alcohol consumption in the outdoor patio is unsound land use policy itself and conflicts with the General Plan, the Zoning Code and sound policy. That is, Findings C (consistency with the General Plan), D (consistency with the Zoning Code), E (compatible with adjacent land uses), F (physically suitable for the use) and G (not detrimental to health, safety and welfare) cannot be made because of the use of alcohol in the outdoor patio.

Further, Chipotle which was processed under the former Zoning Code applied for and received an Accessory Outdoor Dining Permit. The captioned use permit which is processed under the recently adopted Zoning Code appears to include outdoor dining as part of the use permit. However, it is unclear whether this outdoor dining grant ensures that the size of the outdoor dining will not overburden the parking at the Landing.

Third, Condition No. 1 states that "[t]he development shall be in substantial conformance with the approved site plan, floor plan, and building elevations dated with this date of approval." Although this is unclear, presumably it means the plans provided to the Zoning Administrator. Condition No. 25 states:

"There shall be no exterior advertising or signs of any kind or type, including advertising directed to the exterior from within, promoting or indicating the availability of alcoholic beverages."

Jed Fek, Acting Community Development Director
James Campbell, Acting Planning Director

- 3 -

February 9, 2011

However, the building elevations drawings show the advertising of beer: "Crow Burger Kitchen fine food + beer." This conflicts with Condition No. 25. The applicant, the public, and the Community Development Department (or Planning Department, Building Department, and Code Enforcement) are left in the dark as to which Condition governs.

Fourth, Condition No. 4 requires that:

"The patio floor area in excess of the 25 percent allowance will be deducted from the 15 percent of gross floor area limitation for eating and drinking establishment uses."

However, the captioned decision fails to perform this deduction and fails to show the square footage which remains for other eating and drinking establishments. The captioned decision should be revised to include this calculation.

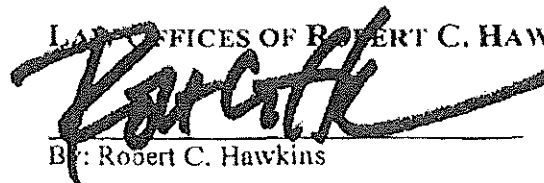
Finally, the captioned decision lists the date of the decision as "January 13, 2011." As indicated above, this is incorrect. As indicated on the attached Agenda for the January 27, 2011 Meeting of the Zoning Administrator, the hearing for the captioned action was noticed for January 13th but continued to January 27, 2011. Hence, the appeals are timely and this typographical error should be corrected.

Given that the hearing will be de novo, I reserve the right to supplement additional reasons which may arise during this appeal process or in review of public records in connection with this matter.

Thank you for your assistance in this matter. Of course, notwithstanding this appeal, thank you for the fine and difficult work that you and your department have done and continue to do. I look forward to learning the date and time of the hearing on this appeal. Should you have any questions, please do not hesitate to contact me.

Sincerely,

LABOR OFFICES OF ROBERT C. HAWKINS



By: Robert C. Hawkins

RCH/kw

cc: Leilani Brown, City Clerk (Via Facsimile Only)

Law Offices of Robert C. Hawkins

110 Newport Center Drive, Suite 200

Newport Beach, California 92660

(949) 650-5550

Fax: (949) 650-1181

FAX COVER SHEET

TRANSMITTED TO:

NAME	FAX NUMBER	PHONE NUMBER
Joel Fick, Acting CD Director James Campbell, Acting Planning Director	(949) 644-3229	
Leilani Brown, City Clerk	(949) 644-3039	

From: Robert C. Hawkins

Client/Matter: Planning Commission

Date: February 9, 2011

Documents: Further Appeal of Use Permit No. UP2010-036 (PA2010-155) attachment ZA
Hearing Agenda for January 27, 2011

Pages: 3*

COMMENTS: Original will follow as indicated.

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ZONING ADMINISTRATOR HEARING AGENDA

CITY OF NEWPORT BEACH
COUNCIL CHAMBERS – 3300 NEWPORT BOULEVARD
Thursday, January 27, 2011
Regular Meeting – 3:30 p.m.

Gregg Ramirez
Zoning Administrator

NOTICE TO THE PUBLIC**HEARING ITEMS**

ITEM NO. 1. Continued from 12/02/10 and 01/13/11 Hearing
Modification Permit No MD2010-016 (PA2010-130)
8 Via Burrone Council District 6

SUMMARY: 8 Via Burrone Modification - A modification permit to allow retention of an over-height, "as built" privacy wall and entry gates which encroaches to 10 feet into the required 10-foot front yard setback. As measured from natural grade, the accessory structure consists of the following elements: stucco-finished walls (to 7-feet 8-inches high), 2 stucco-finished pilasters (to 8-feet 10-inches high), 4 stucco finished pilasters (to 9-feet 11-inches high), 6 wrought-iron, decorative lamps (one lamp attached to each of 4 pilasters 8-feet 8-inches high and one lamp attached to each of 2 pilasters 7-feet 8-inches high), a wrought-iron entry gate (to 8-feet 10-inches high), and 2 fountains (each to 5-feet 8-inches high). The Zoning Code limits accessory structures within the front yard setback to a maximum height of 3-feet 6-inches.) The property is located in the PC-52 (Newport Coast) District.

**RECOMMENDED
ACTION:**

- 1) Conduct public hearing; and
- 2) Deny Modification Permit No MD2010-016 (PA2010-130) subject to the recommended findings.

CEQA

COMPLIANCE: The project is exempt from environmental review pursuant to Section 15303, Class 3 (New Construction or Conversion of Small Structures) of the Implementing Guidelines of the California Environmental Quality Act.

ITEM NO. 2. Continued from 01/13/11 Hearing
Use Permit No. UP2010-036 (PA2010-155)
3107 Newport Boulevard Council District 1

SUMMARY: Crow Burger Kitchen Use Permit - A minor use permit to allow a food service, eating and drinking establishment with no late hours, a covered outdoor patio, and a Type 41 (On Sale Beer and Wine, Eating Place) Alcoholic Beverage Control (ABC) license. The gross floor area of the establishment is 1,878 square feet, the interior net public area will be 650 square feet, and the outdoor patio will be 259 square feet in area. The establishment will provide a

maximum of 42 interior seats and 22 seats on the patio. The requested hours of operation are from 9:00 a.m. to 11:00 p.m., daily. The property is located in the CN (Commercial Neighborhood) District.

RECOMMENDED**ACTION:**

- 1) Conduct public hearing; and
- 2) Approve Use Permit No. UP2010-036 (PA2010-155) subject to the recommended findings and conditions.

CEQA**COMPLIANCE:**

The project is exempt from environmental review pursuant to Section 15303, Class 3 (New Construction or Conversion of Small Structures) of the Implementing Guidelines of the California Environmental Quality Act.

This hearing is subject to the Ralph M. Brown Act. Among other things, the Brown Act requires that the Zoning Administrator's agenda be posted at least 72 hours in advance of each hearing and that the public be allowed to comment on agenda items before the Zoning Administrator and items not on the agenda but are within the subject matter jurisdiction of the Zoning Administrator. The Zoning Administrator may limit public comments to a reasonable amount of time, generally either three (3) or five (5) minutes per person.

It is the intention of the City of Newport Beach to comply with the Americans with Disabilities Act (ADA) in all respects. If, as an attendee or a participant at this hearing, you will need special assistance beyond what is normally provided, the City of Newport Beach will attempt to accommodate you in every reasonable manner. Please contact the Planning Department at least 48 hours prior to the hearing to inform us of your particular needs and to determine if accommodation is feasible.

If in the future, you wish to challenge in court any of the matters on this agenda for which a public hearing is to be conducted, you may be limited to raising only those issues which you (or someone else) raised orally at the public hearing or in written correspondence received by the City at or before the hearing.

Any writings or documents provided to the Zoning Administrator regarding any item on this agenda will be made available for public inspection in the office of the Planning Department located at 3300 Newport Boulevard, during normal business hours.

APPEAL PERIOD: Modification Permit applications do not become effective until 14 days after the date of action, during which time an appeal may be filed with the Planning Commission Secretary in accordance with the provisions of the Newport Beach Municipal Code.

Tentative Parcel Map, Condominium Conversion, Lot Merger, and Lot Line Adjustment applications do not become effective until 10 days following the date of action, during which time an appeal may be filed with the Planning Commission Secretary in accordance with the provisions of the Newport Beach Municipal Code.

Attachment No. PC 6

Acoustical Summary

COLIA ACOUSTICAL CONSULTANTS

177 Riverside, #F
Newport Beach, CA 92663
Certified Acoustical Consultants
Phone 714 960-7511
Fax 714 960-6775
Email: RColia@socal.rr.com

L11-005

January 21, 2011

Mr. Steve Geary
The Crow Bar & Kitchen
2325 Coast Highway
Corona Del Mar, CA 92625

SUBJECT: Acoustical Report of Measurement of Potential Noise Levels At the
New Restaurant at 3107 W. Balboa in Newport Beach

Dear Mr. Geary;

This letter has been prepared to detail the results of measurements of the ambient noise levels along 32nd Street between Balboa Boulevard and Newport Boulevard in Newport Beach. These measurements were made with a clear view to the vehicular traffic on 32nd Street. The measurement location was at the edge of sidewalk representing the closest property of the residences on the north side of 32nd Street.

The measurements were made between 10:00 P.M. and 10:30 P.M. on January 19, 2011 at the location shown in Figure 2. This site was selected to represent the equivalent distance to the property lines of the residences without being on their property. The measurements were made using the A-weighted scale of a Bruel and Kjaer 2230 Precision Integrating Sound Level Meter, Type I. The meter was calibrated before the measurements and was found to be within 0.1 dB of tolerance.

The results of the measurement indicate an average noise level (Leq) of 62 dB. The ambient noise level of existing traffic in the area indicates high traffic volumes on Newport Boulevard and 32nd Street on a mid-winter mid-week night. One might expect higher traffic flows in spring, summer and fall nights, especially on weekends.

RESULTS

At North Residential Property Side across 32nd Street:

Site 1: Measured **62.0 dBA** at representative 10 P.M. hour.

L11-005

January 21, 2011

The City Exterior Noise Standard is **50 dBA** at night (10:00 P.M. to 7:00 A.M).

The proposed restaurant at 3107 W. Balboa will have a north facing patio that will seat a maximum of 22 people. Normal conversation between two people averages 65 dBA at 3 feet. With 22 people speaking at once the combined worst case noise level at 3 feet would be 78.4 dBA at the patio. The residences across 32nd Street are 208 feet away from the patio to their closest property line. The noise drop-off rate is 6 dB per each doubling of distance. The noise drop-off with distance was calculated by the following formula:

$$20 \text{ Log } (3'/208') + 78.4 = \mathbf{41.6 \text{ dBA}}$$

The noise from the patio will traverse across the parking lot and 32nd Street and will decrease with distance (of 208 feet) to 41.6 dBA at the residences to the north. Even if the noise level of louder voices would increase to 75 dBA in conversation the projected impact at 208 feet would fall to 51.6 dBA to the north. Table 1 show these results in summary. The worst-case level of 51.6 dBA is slightly higher the nighttime standard of 50 dBA but is significantly lower than the existing traffic noise level of 62 dBA at 10 P.M. from 32nd Street. Thus, the patio noise impact in normal conditions meets the City standard of 50 dBA and is significantly less than ambient street noise. Even the worst-case noise level is significantly less than the ambient street traffic but is slightly higher the noise standard by at least 1 dB.

TABLE 1

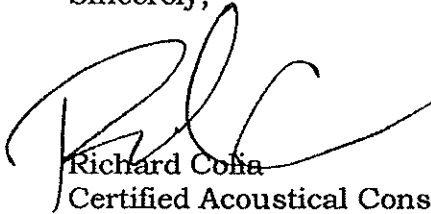
Summary of Results – New North-Facing Patio, 22 people

<i>Patio Noise Level</i>	<i>Distance to Residences Feet</i>	<i>Noise Level @ Residences</i>	<i>Nighttime Std. dBA</i>	<i>Ambient 32nd St.</i>
65 dBA	208	41.6	50	62 dBA
75 dBA (worst-case)	208	51.6	50	62 dBA

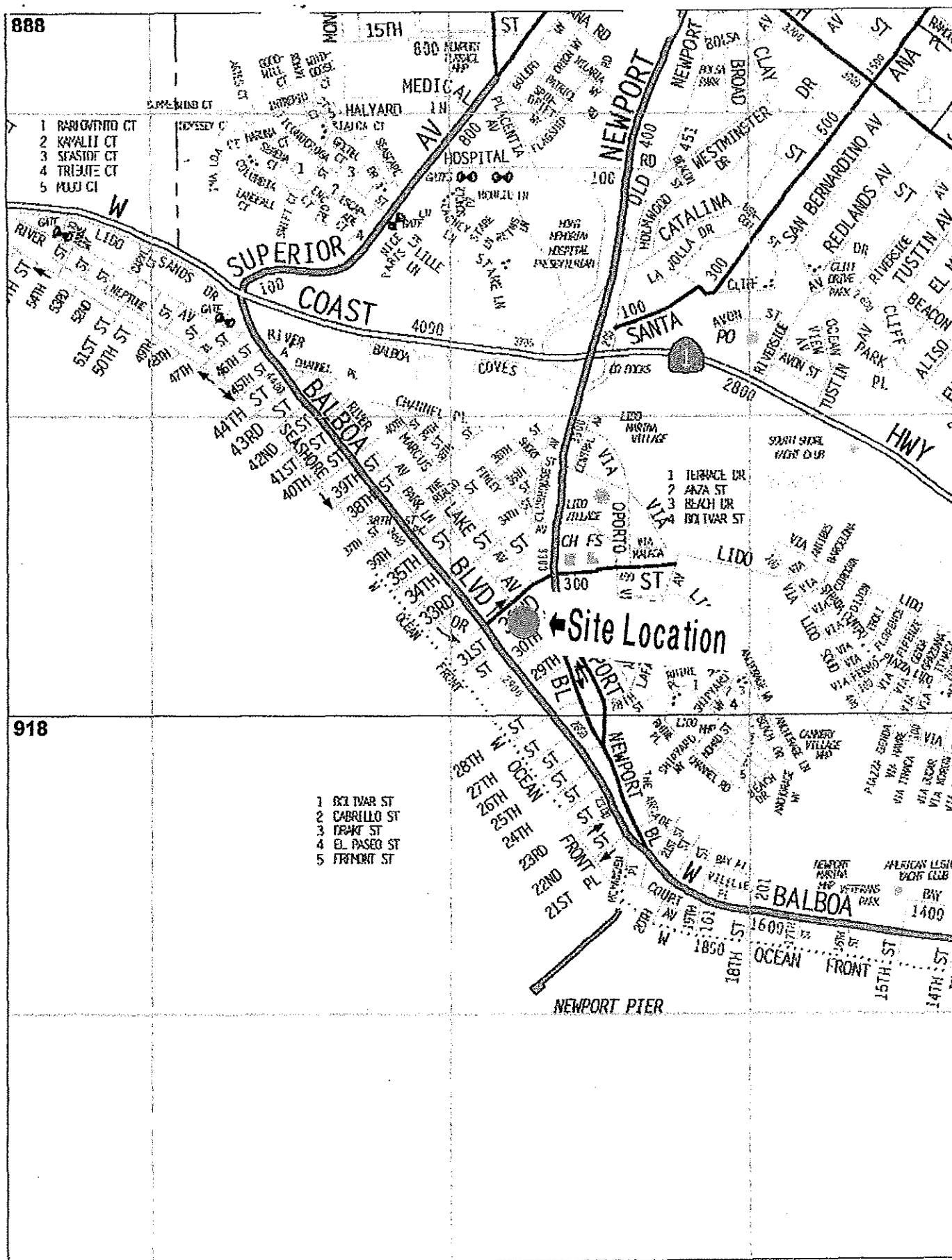
L11-005
January 21, 2011

If you have any questions regarding this information please call.

Sincerely;

A handwritten signature in black ink, appearing to be 'R. Conia', written over the printed name.

Richard Conia
Certified Acoustical Consultants



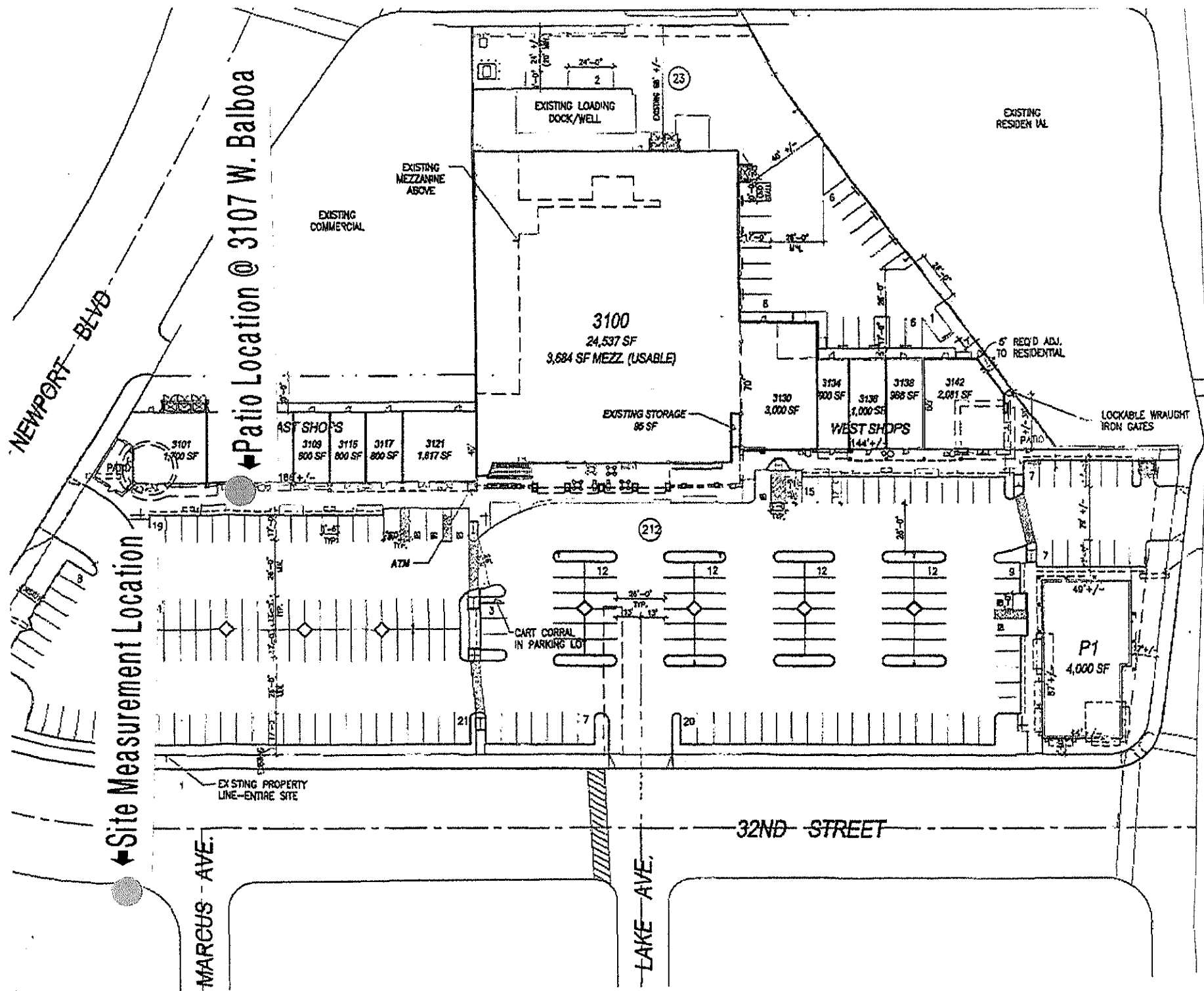
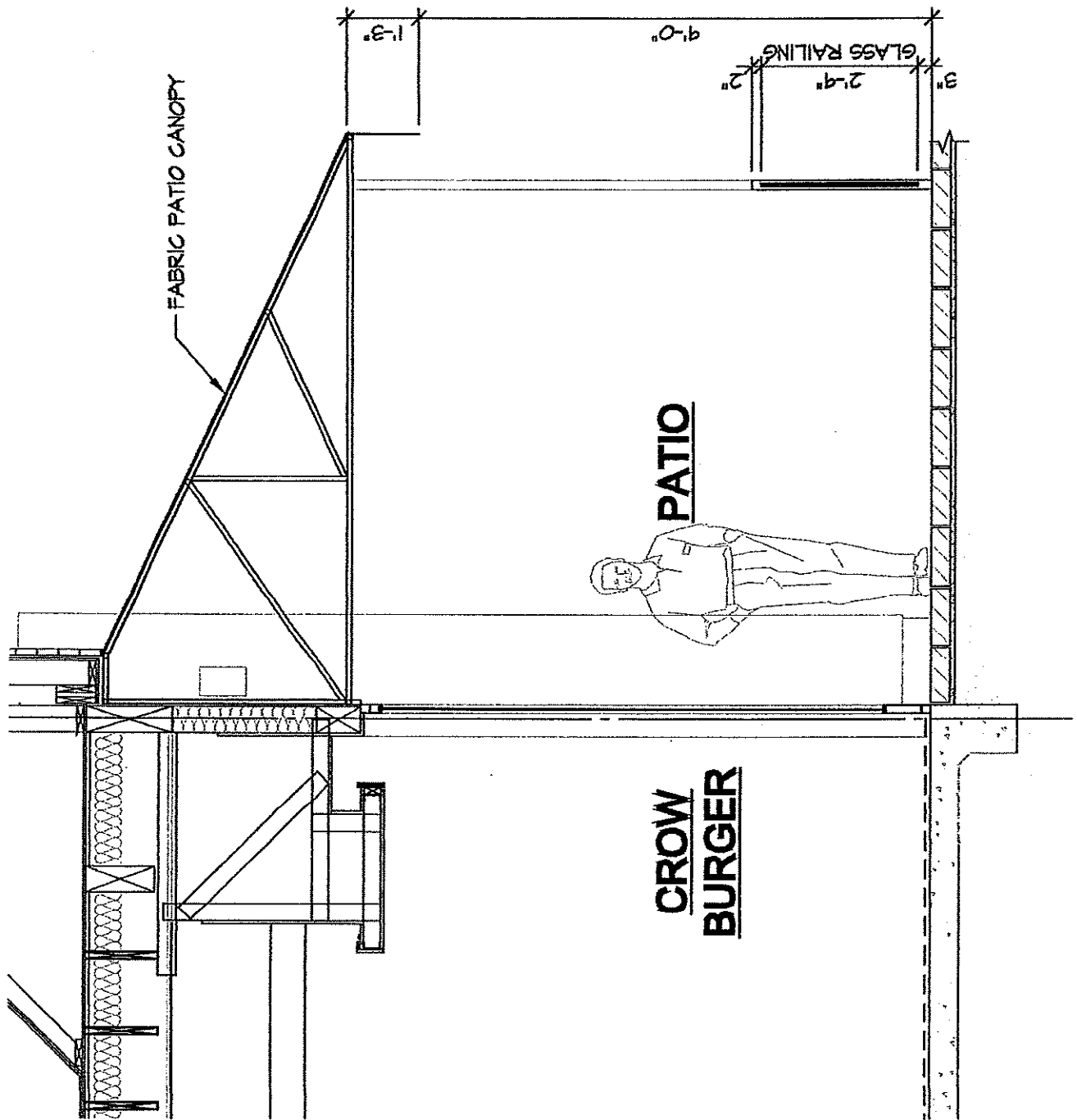


FIGURE 2: Site Measurement Location



Attachment No. PC 7

Alcohol Related Statistics

City of Newport Beach

Police Department

Memorandum

November 29, 2010

TO: Makana Nova, Assistant Planner

FROM: Paul Salenko, Crime Analyst

SUBJECT: Alcohol Related Statistics

At your request, our office has reviewed police services data for the **Crow Burger Kitchen** at **3107 Newport Blvd.** This area encompasses our reporting district (RD) number 15 as well as part of Census Tract 635. This report reflects **City of Newport Beach** crime data for calendar year 2009, which is the most current data available.

Calls for Service Information

City wide there were approximately 69,294 calls for police services during this time, of which 6,663 were in RD15. A "call for service" is, *any contact of the police department by a citizen which results in the dispatching of a unit or causes the contacted employee to take some sort of action*, such as criminal investigations, alarm responses, traffic accidents, parking problems, and animal control calls, etc.

Crime Information

There were 6,194 crimes reported to the Newport Beach Police Department during this period. Of this total, 2,884 were Part One Crimes. Part One crimes are the eight most serious crimes (*Homicide, forcible Rape, Robbery, Aggravated Assault, Burglary, Larceny-theft, Auto Theft and Arson*) as defined by the FBI in the Uniform Crime Reports. The remaining 3,350 were Part Two crimes. The Part One crime rate for the entire city during this same period was 3,297.31 per 100,000 people. The national Part One crime rate was 3,667.02* per 100,000 people.

Crimes	RD 15	Newport Beach	California*	National*
Part 1	343	2,884	1,184,073	10,639,369
Part 2	242	3,350	N/A	N/A
Part 1 Crime Rate	11,506.43	3,297.31	3,203.52	3,465.52

The number of active ABC licenses in this RD is 79**

Per capita ratio 1 license for every 38 residents.

This reporting district had a total of 946 reported crimes as compared to a City wide reporting district average of 162 reported crimes. This reporting district is 784 crimes more or 483.95% above the City wide reporting district average. This location is within an RD that is over the Orange County per capita average of ABC licenses**.

Arrest Information

There were 80 DUI arrests and 281 Plain Drunk arrest in this area during this same period as compared to 1,270 for the entire city. This RD amounts to 28.43% of the DUI/Drunk arrests made in the entire City. According to a recent national study by the Department of Justice, more than 36% of adult offenders convicted of crimes in 1996 had been drinking at the time of their arrest.

Arrests (DUI/Drunk)	RD 15	Newport Beach	California*	National*
	361	1,270	324,442	2,094,731
Total Arrests	796	3,595	1,474,004	13,687,241

Additional Information

The Alcoholic Beverage Outlets ordinance states that the Planning Commission shall consider the crime rate in the adjacent reporting districts. The two adjacent reporting districts you requested are RD 13 and RD 16

Crimes	RD 13	RD 16
Part 1	112	167
Part 2	79	107
Crime Rate	5,812.62	6,003.49
Arrests (DUI/Drunk)	39	110
Total Arrests	161	323
Calls For Service	2,554	3,261
Number of active ABC licenses	6**	6**
Per capita ratio 1 license for every	321* residents	464* residents.

Note: It is important to remember that when dealing with small numbers any change greatly affects any percentage changes.

The population figure used for the Crime Rate was 86,252.

*These numbers are from the 2009 Uniform Crime Reports, which is the most recent edition.

**The number of active ABC licenses is the total of all types of licenses known to the police department as of the date of this document. As of June 30, 2009 the Orange County average of active, retail ABC licenses was 1 license for every 542 residents. (5,589 licenses and a population of 3,026,786)

If you are in need of any further assistance, please contact me at (949) 644-3791.

Paul Salenko
Crime Analysis Unit

Attachment No. PC 8

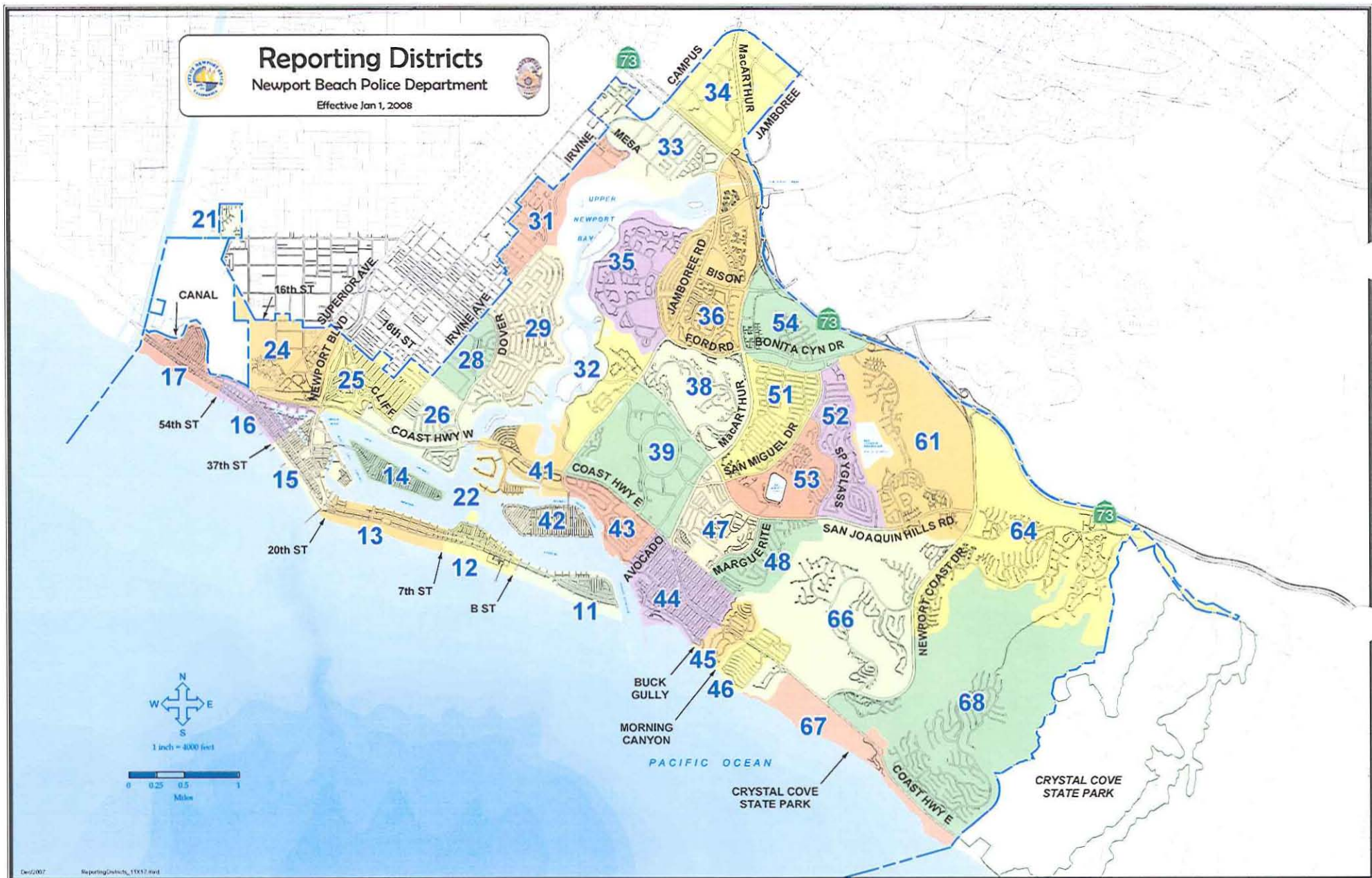
Newport Beach Reporting Districts

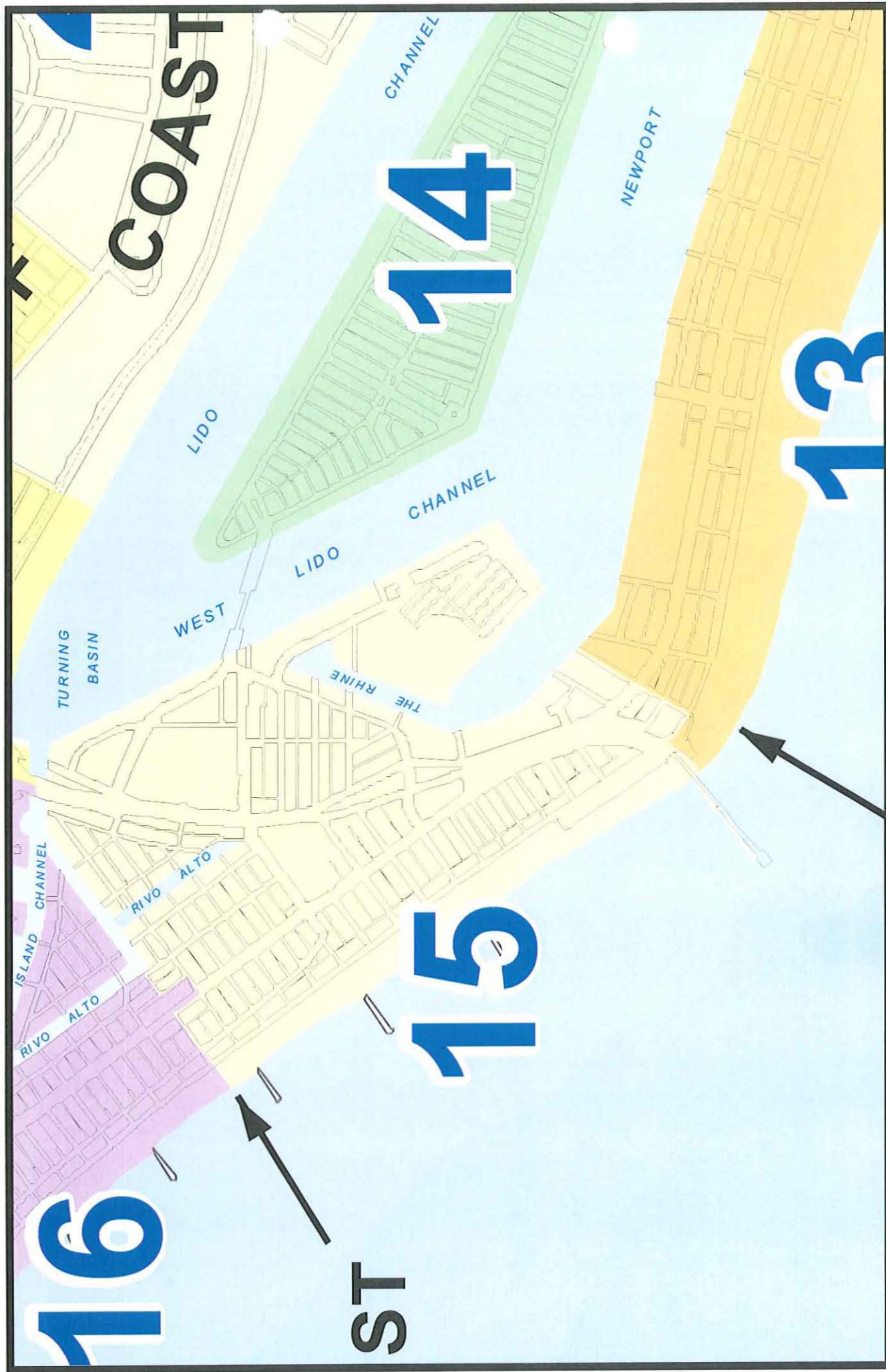


Reporting Districts

Newport Beach Police Department

Effective Jan 1, 2008





Attachment No. PC 9

Police Department Recommendation

**City of Newport Beach
Police Department**

M e m o r a n d u m

November 29, 2010

TO: Makana Nova, Assistant Planner

FROM: Detective Bryan Moore

SUBJECT: Crow Burger Kitchen, 3107 Newport Boulevard, Use Permit No. 2010-036, OD2010-005 (PA2010-155).

At your request, the police department has reviewed the project application for *Crow Burger Kitchen*, located at 3107 Newport Boulevard, Newport Beach. The applicant proposes a use permit and outdoor dining permit that would allow for a full-service, high turnover eating and drinking establishment with a Type 41 alcoholic beverage license. The gross floor area of the establishment is 1,878 square feet, the interior net public area will be 650 square feet and the outdoor patio will be 259 square feet in area. The establishment will provide a maximum of 42 interior seats and 22 seats on the patio. The requested hours of operation are from 9:00 a.m. to 11:00 p.m., Sunday through Wednesday and 9:00 a.m. to 12 midnight, Thursday through Saturday.

The applicant will apply for a Type 41 (On Sale & Wine – Eating Place) license with the Department of Alcoholic Beverage Control.

I have included a report by Crime Analyst Paul Salenko that provides detailed statistical information related to calls for service in and around the applicant's place of business. This report indicates that this new location **is** within an area where the number of crimes is at least 75% higher than the average of all reporting districts in the City. This location **is** also within an RD that is over the Orange County per capita of ABC licenses.

Applicant History

The applicant, Steve Geary, is a resident of Corona del Mar and has been the principle owner/operator of the Crow Bar and Kitchen restaurant (in CDM) since its inception in 2007. Geary's current concept for the Crow Burger Kitchen involves a restaurant that specializes in serving gourmet style burgers. Geary's intent is to provide patrons with a quality late night dining option, at reasonable prices and a neighborly atmosphere.

Crow Burger Kitchen
UP No. 2010-036

Geary proposes to pair the restaurant's cuisine with craft style beers as well as a quality, limited wine list. Geary believes that his alcoholic beverage selection will serve to enhance the food and overall dining experience, without providing an atmosphere for heavy drinking over long periods of time.

Per the plans provided by Geary, there is no fixed bar at this location; however; he did state that there will be two televisions inside the restaurant (with no sound) which will add to the ambiance of the dining area.

Police Activities and Calls for Service Data (Crow Bar Kitchen)

The below information represents the time period between January 1, 2010 through November 30, 2010:

TYPE	CALLS/INCIDENTS	NOTES
Fights/Disturbance Calls	10	Batteries, verbal disputes, keep the peace
Miscellaneous Calls	8	Medical aid, alarms, etc.
Alcohol Related Arrests	2	(2) DUI and (0) public intoxication
Use Permit Violations	0	None noted by Police Department

Recommendations

The proposed location for Crow Burger Kitchen is located in RD (reporting district) 15 which is the most concentrated area for retail alcohol establishments in Newport Beach (1 ABC license for every 38 residents). Additionally, this RD had a total of 946 reported crimes as compared to a City wide reporting district average of 162 reported crimes (483.95% above the City wide RD average). These statistics would tend to indicate that there is a strong correlation between the over-concentration of ABC establishments and police related activity. It should also be noted that the majority of these calls for service occurred between the hours of 6 p.m. and 2 a.m.

It is for the above reasons that we are projecting that the applicant's proposal will have an impact on police related activities and calls for police services. In order to minimize the impact that this additional ABC license will have on the community, the Police Department is recommending that the Crow Burger Kitchen close at 11:00 p.m., daily. Additionally, we would recommend that the outdoor patio close at 10:00 p.m., daily. These recommended hours will not only lessen the impact on calls for service, but they will also limit the effects that noise will have on the neighboring residential areas.

It should be noted that the Police Department would give further consideration to the applicant's proposed hours of operation should they be subject to the pending Operator's Permit Ordinance.

Signs and Displays

Any signs or displays would need to conform to City requirements. There shall be no exterior advertising or signs of any kind or type, including advertising

directed to the exterior from within, promoting or indicating the availability of alcoholic beverages. Interior displays of alcoholic beverages or signs, which are clearly visible to the exterior, shall constitute a violation of this condition.

Hours of Operation

The proposed hours of operation are from 9:00 a.m. to 11:00 p.m., Sunday through Wednesday and 9:00 a.m. to 12 midnight, Thursday through Saturday.

The Police Department recommends that Crow Burger close not later than 11:00 p.m., daily. We also recommend that the outdoor patio close at 10:00 p.m., daily.

Security

The police department has no recommendations.

Employee Training

Require all owners, managers, and employees selling alcoholic beverages to undergo and successfully complete a certified training program in responsible methods and skills for serving and selling alcoholic beverages.

Additional Comments

The Police Department has no additional objections to the operation as described by the applicant. For the purposes of this application, staff may also want to consider establishing conditions that would require a special event permit. A special event permit may be required for any event or promotional activity outside the normal operational characteristics of the proposed operation. For example, events likely to attract large crowds, events for which an admission fee is charged, events that include any form of contract promoters, or any other activities as specified in the Newport Beach Municipal Code to require such permits.

Other Recommended Conditions

In addition, the Police Department has determined that the following conditions would be appropriate for the conditional use permit for the business:

1. Approval does not permit the premises to operate as a bar, tavern, cocktail lounge or nightclub as defined by the Newport Beach Municipal Code, unless the planning commission first approves a use permit.
2. No alcoholic beverages shall be consumed on any property adjacent the licensed premises under the control of the licensee.
3. No "happy hour" type of reduced price alcoholic beverage promotion shall be allowed except when offered in conjunction with food ordered from the full service menu. There shall be no reduced price alcoholic beverage promotion after 9 p.m.

4. Petitioner shall not share any profits or pay any percentage or commission to a promoter or any other person based upon monies collected as a door charge, cover charge, or any other form of admission charge, including minimum drink orders or the sale of drinks.
5. The quarterly gross sales of alcoholic beverages shall not exceed the gross sales of food during the same period. The licensee shall at all times maintain records, which reflect separately the gross sales of food and the gross sales of alcoholic beverages of the licensed business. These records shall be kept no less frequently than on a quarterly basis and shall be made available to the police department on demand.
6. There shall be no on-site radio, television, video, film or other electronic media broadcasts, including recordings to be broadcasted at a later time, which include the service of alcoholic beverages, without first obtaining an approved special event permit issued by the City of Newport Beach.
7. There shall be no live entertainment allowed on the premises.
8. There shall be no dancing allowed on the premises.
9. No games or contests requiring or involving the consumption of alcoholic beverages shall be permitted.
10. Food service from the regular menu must be available to patrons until close.
11. Strict adherence to maximum occupancy limits is required.

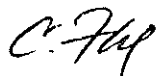
Alcoholic Beverage Control License

Upon approval of the CUP, the ABC license will be conditioned as necessary to maintain the health, safety and welfare of the community.

If you have any questions, please contact me at (949) 644-3725.



Detective Bryan Moore
ABC Liaison/Vice/Intelligence



Craig Fox, Captain
Detective Division Commander

Attachment No. PC 10

The Landing Square Footage
Tracking Tables

Table 2. The Landing Shopping Center**3101-3121 Newport Blvd. and 3100-3138 Balboa Blvd.**

Last Updated: 12-22-10

Table 1. Current Parking Summary

Proposed use	Sq ft	Tenant	Parking Requirement at 1 space/200 sq ft	Discretionary Application No.
Grocery	28,221	Pavillion's	142	Plan Check No. 1590-2010
S3101	1,700	Chipotle	9	UP2010-017, OD2010-004 (PA2010-096)
S3107	1,878	Crow Burger	9	UP2010-036 (PA2010-155)
S3109	738	Retail	4	
S3115	900	Retail	5	
S3117	761	Retail	4	
S3121	1,614	Retail	8	
S3130	2,918	Retail	15	
S3134	903	Retail	5	
S3136	1,003	Retail	5	
S3138	998	Retail	5	
S3142	2,083	Gina's Pizza	10	
Storage	95	N/A	0	
S3152	4,000	Chase	20	Plan Check No. 1642-2010
TOTAL	47,878	N/A	240	

The Landing Shopping Center
3101-3121 Newport Blvd. and 3100-3138 Balboa Blvd.

Last Updated: 12-22-2010

Table 2. Summary of Eating and Drinking Establishments

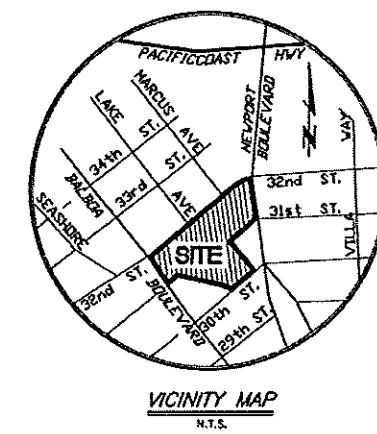
Suite Number	Gross Square Footage of Tenant Suite	Tenant	Gross Floor Area Plus Outdoor Dining Area Parked Toward Max. 15 Percent	Parking Requirement at 1/200 sq ft of gross interior floor area	Net Public Area Parked
S3101	1,700	Chipotle	1,911	9 spaces	711
S3107	1,878	Crow Burger	1,975	4 spaces	747
TOTAL	3,578		3,886	13 spaces	1458

Total Eating and Drinking Establishments Square Footage Parked: 3,886 sq ft
Total Maximum Eating and Drinking Establishment Square Footage: 7,182 sq ft
Percentage of 15 Percent Currently Utilized: 54%

Attachment No. PC 11

Project plans

CITY OF NEWPORT BEACH



DRAWN BY _____ SHEET NUMBER _____
 AAC _____
 CHECKED BY _____
 CDO _____
 SCALE _____ **A1.0**
 JOB NO. _____
 LOCK _____



SOUTH ELEVATION	SCALE 1/4" = 1'-0"	10
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